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ABSTRACT

The book provides a side-by-side analysis and annotation of Public Law 99-457 (Education of the Handicapped Amendments of 1986). The sourcebook organizes critical portions of the following five documents: the legislative history from House Report 99-860; the Part H legislation from P.L. 99-457; the final regulations for Part H with current published corrections; the referenced regulations from Part B on confidentiality; and the regulations from the Family Educational Rights and Privacy Act. Noted throughout are critical nuances and relationships as well as issues yet to be decided and areas that must be addressed in state regulation and policy development. Part 1 covers programs for infants and toddlers with handicaps including legal regulation of early intervention services and Part H legislative history. Part 2 details the regulations for Part H including state applications, procedures for grants to states, program and service components, state administration, and interagency coordinating councils. Part 3 addresses supportive regulations covering confidentiality and family educational rights and privacy. Finally Part 4 considers supplementary information including an analysis of Part H issues, comprehensive definitions, and a regulatory index. (DB)

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Early Intervention Regulation

Annotation and Analysis of Part H

Wesley Brown

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Preface

Two crucial national meetings more than two and one half years apart nourished the impetus for this book. Activity at the Fall 1986 Division for Early Childhood Conference in Louisville, Kentucky was feverish as the attendees first learned about and then celebrated the congressional passage of what would become Public Law 99-457. The rapid congressional action and the preexisting conference structure allowed little time, however, for communication about the actual nature of the programs created by this legislation. Conferees cautiously awaited presidential action. Would President Reagan approve it, allow it to become law without his signature, or attempt a pocket veto?

Before the end of December, the legislation had presidential approval, but January brought an administration budget proposal without a funding request for Part H. This restrictive recommendation, like so many in the budget proposals of the 1980s, was set aside during the congressional approval process, and the program was funded consistent with the legislative intent.

As one of a group of individuals who had long advocated for earlier intervention and related changes at the State level, I recognized that we suddenly had a vehicle of national scope to guide and enhance our efforts. My activity began immediately, seeking more definitive legislative information and planning steps to encourage the participation of my home State. Developing a broad, knowledgeable understanding of this instrument continued to present staggering difficulties, though.

Ultimately (in 1987) all eligible States and other applicants entered the planning process. Proposed regulations for the program were published in mid-November of that year, and most States began to have Interagency Coordinating Council (ICC) meetings by early 1988. I was appointed the chair for Tennessee's ICC by Governor Ned McWherter. Across the nation, everyone

began efforts to synthesize the functional meaning of Part H.

Meanwhile, the proposed regulations were subject to intense lobbying for change from varying positions. Thus, during the nineteen months prior to the final regulations, developmental efforts were held back, often to polite preliminary exercises. At the Partnerships for Progress meeting in June 1989, attendees were elated to find in their registration packets a copy of the long-delayed final Part H regulations. Attempting to consume this new material, however, presented very significant challenges. The process appeared to be far more complex than the sophistication of most devotees. The regulations had been broadly reorganized and extended. The type was diminutive.

My concern with respect to fostering Part H implementation amplified. Was it possible that the unfailing efforts of the preparers would be lost for most consumers? Before the conclusion of the Partnerships for Progress meeting, the ideas for the development of this volume had basically evolved.

Without the continuing support of East Tennessee State University and ongoing interactions with colleagues in early intervention throughout the past decide, the effort could not have reached fruition, however. I am most appreciative of everyone whose contributions helped me complete this project. I would like especially to recognize ICC members, lead agency personnel in the Department of Education, and Part H planners across the State of Tennessee.

Part H clearly provides one of the most definitive and intense case studies of our times. The development and implementation of policy remain a very stimulating area for examination, but the ultimate success of this initiative remains for your nurturance, creativity, and persuasion. I hope this volume can help you to prevail through the difficult times ahead with the Program for Infants and Toddlers with Handicaps.

Part One

The Program for Infants and Toddlers with Handicaps

This volume has been developed to serve as a sourcebook to assist individuals involved in implementing Part H of the Education of the Handicapped Act, as contained in Public Law 99-457. The critical mission and expectations of this landmark legislation bring numerous major implementation and policy challenges for States and early intervention advocates. The magnitude and nature of the Part H requirements for participation in the context of a discretionary program are unprecedented.

Because the program entails the creation and funding of a statewide system of family-centered early intervention services that is coordinated and comprehensive in nature, the four-year period prior to full implementation and availability appears to be passing rapidly . For State level bureaucrats, developing the system has been likened to "building an airplane while attempting to fly it." For advocates and early interventionists, it provides exceptional demands for cooperation and the unified influence needed to support and inspire the universal implementation of the Early Intervention Program for Infants and Toddlers with Handicaps.

This volume organizes portions of five critical, public Part H documents in a sequenced and readable manner. The documents include: the legislative history from House Report 99-860; the Part H legislation from P.L. 99-457; the final regulations for Part H with current published corrections; the referenced regulations from Part B on confidentiality; and the regulations from the Family Educational Rights and Privacy Act. The presentation of each document is annotated through a two-column format. The purpose of the annotations is to orient the reader to important portions of the document and to clarify selected information. The side-by-side analysis suffers from space limitations, however, and so, to the greatest extent possible, any analysis beyond conservative clarifications has been set into a separate portion of the book.

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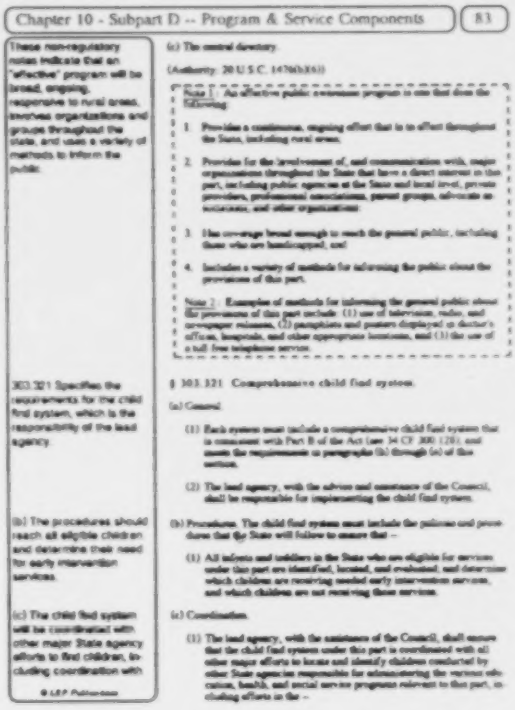
The following is an example of the two-column format. The original document is in the wide column and the annotations are presented in the narrow column. Annotations are generally preceded by section numbers or letters to link the annotation to specific portions of that section. The symbol for section was eliminated in order to save space in the annotations and in some cases, the section reference was also eliminated; but the annotation is always directly beside the content being discussed. When an annotation includes a note (**See Analysis**- topic), this is an indication that this content area has been selected for topical analysis in Chapter 16.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These non-regulatory notes indicate that an "effective" program will be broad, ongoing, responsive to rural areas, involves organizations and groups throughout the state, and uses a variety of methods to inform the public.

303.321 Specifies the requirements for the child find system, which is the responsibility of the lead agency.

(b) The procedures should reach all eligible children and determine their need for early intervention services.

(c) The child find system will be coordinated with other major State agency efforts to find children, including coordination with

(c) The central directory

(Authority: 20 U.S.C. 1476(b)(6))

Note 1: An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas.
2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in the part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate organizations, and other organizations.
3. Has coverage broad enough to reach the general public, including those who are handicapped, and
4. Includes a variety of methods for informing the public about the provisions of this part.

Note 2: Examples of methods for informing the general public about the provisions of this part include: (1) use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctor's offices, hospitals, and other appropriate locations, and (3) the use of a toll free telephone service.

§ 303.321 Comprehensive child find system.

(a) General.

(1) Each system must include a comprehensive child find system that is consistent with Part B of the Act (see 34 CFR 300.128), and meets the requirements in paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) Procedures. The child find system must include the policies and procedures that the State will follow to ensure that --

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated, and determine which children are receiving needed early intervention services, and which children are not receiving these services.

(c) Coordination.

(1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, including efforts in the --

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Figure 1.1 Sample of Annotated Page Format.

When the regulations include a note or comment, a box has been placed around that information, to separate it from the actual regulations. This has been done because such notes (in FERPA and Part H) and comments (in Part B) are not binding or regulatory in nature. They are, however, quite helpful since they clarify intent, cross reference, and give specific examples to support preceding regulations. There will be additional discussion about notes in Chapter 2.

Throughout the annotations and other chapters State is used to include all eligible applicants for Part H, including the District of Columbia, Puerto Rico, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands.

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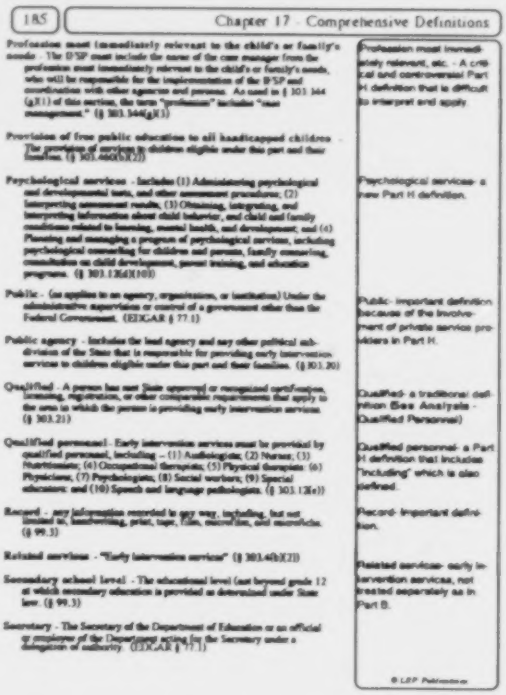
Beyond the annotations, this volume contains four additional resources specially developed for the reader. Chapter 2 discusses the legal regulation of early intervention services. It provides background on the process and role of regulation and is based, primarily, on experience from special education regulation. Next, Chapter 16 presents, by topic, an analysis of areas selected from the regulations. This analysis represents only the opinions of the author of this volume. The analysis is interpretative in nature and does not reflect the activities of any State or Federal applicant or contractor. I have gone to great lengths to avoid under- or over-interpreting the topics. Many of my comments, I believe, should represent the common thoughts of many individuals involved with this program. There are, however, individuals who wish to interpret these regulations to achieve ends consistent with their particular beliefs and desires for the future of the Part H program and its implementation or for the involvement of their profession or discipline. In this regard, I have also attempted not to editorialize or promote particular outcomes for this program. Rather, I have sought to highlight the important portions that must be addressed in State regulations and policy development, as well as, information that will be important to services providers, to parents, and to other advocates.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Profession most immediately relevant to the child's or family's needs - The IFSP must include the name of the case manager from the profession most immediately relevant to the child's or family's needs, who will be responsible for the implementation of the IFSP and coordination with other agencies and persons. As used in § 303.344 (g)(1) of this section, the term "profession" includes "case management." (§ 303.344(g)(1))

Provision of free public education to all handicapped children - The provision of services to children eligible under this part and their families. (§ 303.460(b)(2))

Psychological services - Includes (1) Administering psychological and developmental tests, and other assessment procedures; (2) Interpreting assessment results; (3) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and (4) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs. (§ 303.12(d)(10))

Public - (as applies to an agency, organization, or institution) Under the administrative supervision or control of a government other than the Federal Government. (EDGAR § 77.1)

Public agency - Includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families. (§ 303.20)

Qualified - A person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services. (§ 303.23)

Qualified personnel - Early intervention services must be provided by qualified personnel, including -- (1) Audiologists; (2) Nurses; (3) Nutritionists; (4) Occupational therapists; (5) Physical therapists; (6) Physicians; (7) Psychologists; (8) Social workers; (9) Special educators; and (10) Speech and language pathologists. (§ 303.12(e))

Record - any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche. (§ 99.3)

Related services - "Early intervention services" (§ 303.16(b)(2))

Secondary school level - The educational level (not beyond grade 12 at which secondary education is provided as determined under State law. (§ 99.3)

Secretary - The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority. (EDGAR § 77.1)

Profession most immediately relevant, etc. - A critical and controversial Part H definition that is difficult to interpret and apply.

Psychological services- a new Part H definition.

Public- important definition because of the involvement of private service providers in Part H.

Qualified- a traditional definition (See Analysis - Qualified Personnel)

Qualified personnel- a Part H definition that includes "including" which is also defined.

Record- important definition.

Related services- early intervention services, not treated separately as in Part B.

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Figure 1.2 Sample of Definition Page Format.

Next, Chapter 17 provides a set of comprehensive definitions developed from the federal regulations included in this book. As the sample indicates, the definitions are also annotated. Important definitions that are new in Part H are highlighted, as

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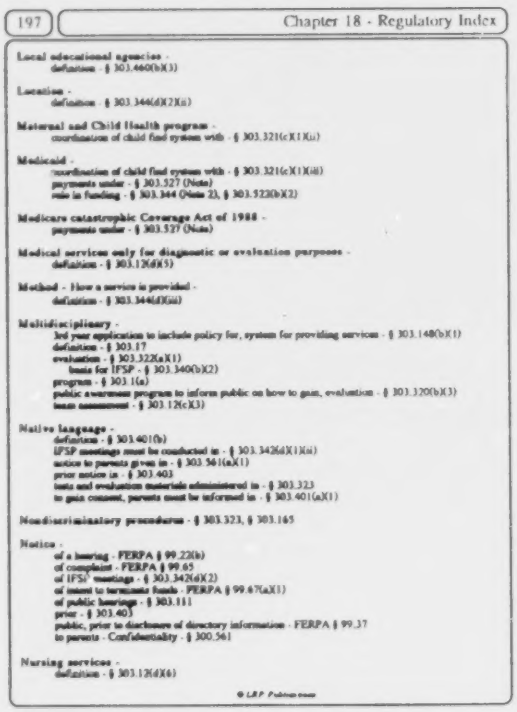
are definitions that require special attention. Each definition contains the regulatory source for the information included. In some cases, I subdivided certain extensive definitions into several separate related definitions. For example, the lengthy case management definition was subdivided into: case management, case management activities, case management services and case managers.

When citations are given for regulations, they begin with the section number (for example **§ 302.33**). This may be followed by up to three additional designations (for example **§ 143.33(d)(2)(ii)**). The major subdivisions within a section are designated by lower case letters (for example **(a)**). Within lettered subsections, there are numbered divisions (for example **(2)**). The final division is for a lower case roman type (for example **(ii)**). Following the citations in order allows one to move quickly to the specific subsection being referenced. In this volume three sets of regulatory section numbers are used in the references: § 303 indicates Part H regulations, §300 indicates Part B regulations, and §99 indicates Family Educational Rights and Privacy regulations.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Local educational agencies -
definition - § 303.460(b)(3)

Location -
definition - § 303.344(d)(2)(ii)

Maternal and Child Health program -
coordination of child find system with - § 303.321(c)(1)(ii)

Medicaid -
coordination of child find system with - § 303.321(c)(1)(iii)
payments under - § 303.527 (Note)
role in funding - § 303.344 (Note 2), § 303.522(b)(2)

Medicare catastrophic Coverage Act of 1988 -
payments under - § 303.527 (Note)

Medical services only for diagnostic or evaluation purposes -
definition - § 303.12(d)(5)

Method - How a service is provided -
definition - § 303.344(d)(iii)

Multidisciplinary -
3rd year application to include policy for, system for providing services - § 303.148(b)(1)
definition - § 303.17
evaluation - § 303.322(a)(1)
basis for IFSP - § 303.340(b)(2)
program - § 303.16(a)
public awareness program to inform public on how to gain, evaluation - § 303.320(b)(3)
team assessment - § 303.12(c)(3)

Native language -
definition - § 303.401(b)
IFSP meetings must be conducted in - § 303.342(d)(1)(ii)
notice to parents given in - § 303.561(a)(1)
prior notice in - § 303.403
tests and evaluation materials administered in - § 303.323
to gain consent, parents must be informed in - § 303.401(a)(1)

Nondiscriminatory procedures - § 303.323, § 303.165

Notice -
of a hearing - FERPA § 99.22(b)
of complaint - FERPA § 99.65
of IFSP meetings - § 303.342(d)(2)
of intent to terminate funds - FERPA § 99.67(a)(1)
of public hearings - § 303.111
prior - § 303.403
public, prior to disclosure of directory information - FERPA § 99.37
to parents - Confidentiality - § 300.561

Nursing services -
definition - § 303.12(d)(6)

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Figure 1.3 Sample of Index Page Format.

Finally, Chapter 18 provides a comprehensive index developed from the regulations selected for inclusion in this book. The topics for the index include all definitions, a topic derived for nearly all regulatory sections, and other topics selected internally from a careful review of the content of each regulation. The index indicates a regulatory location and page number in this volume for each topic or subtopic listed.

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Introduction

This chapter discusses various roles, actions, and implications related to the regulation of early intervention services. Regulation is often first associated with the executive branch of the Federal government, with its preparation of formal regulations to implement legislation. For our purposes, it will be viewed from a much broader context, that, for Part H, involves the executive and legislative branches of government at both the Federal and State levels and has great implications for those involved in the delivery of services.

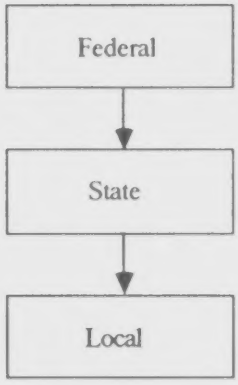

Figure 2.1 Levels of Regulations.

Eventually, the act of legal regulation will also involve the judicial branches at the Federal and State levels, as well as other executive and legislative activities at the local level. Figure 2.1 indicates the levels where regulation can take place.

What has begun as the legislative action of Congress, developing the new Part H program for infants and toddlers with handicaps, has evolved into a process whereby the executive branch of Federal government is responsible for implementing the legislation through the creation of administrative policy. Figure 2.2, on the following page, illustrates the varying sources of regulatory information. The Federal regulations are predominately focused towards the participating States, who must develop State plans for Federal approval that must respond to the Federal requirements with extensive policies, assurances, and procedures. The States, in turn, then take on the regulatory function with their own newly developed policies and procedures, by becoming the

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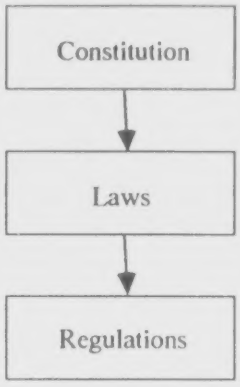

Figure 2.2 Sources of Regulatory Information.

regulators of those subject to these new requirements. Within the States, the agencies providing early intervention services finally become subject to these requirements.

At each level in the development of these policies and procedures, the original intent of the legislation and the positions of a variety of constituencies must be involved to enhance the actual outcomes achieved. This extensive, complex process of changes, once initially implemented, will be subject to the processes of monitoring and compliance, as well as to legal challenges. Parties dissatisfied with outcomes from either of the two complaint procedures provided in the regulations may seek corrective actions in State and Federal courts.

This chapter will continue by discussing, individually, seven areas related to the legal regulation of early intervention services: legislative intent, Federal regulatory processes and administrative policy, State regulation, local implementation issues, monitoring and compliance, complaint procedures, and judicial review. The relationship of these areas to eligible child needs is illustrated in Figure 2.3. Beginning at the top with the child's needs, various types of regulatory activity occur down the left side of the figure. Actual services delivered by early intervention personnel to the child and family are illustrated at the bottom. Finally, on the right side of the figure are the various processes for complaints and review of the services and service system serving the child and family. This chapter will look at the regulatory influences involved in implementing the Part H program. The annotation and analysis of specific issues and requirements will be included in later parts of this volume.

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Legislative Intent

Over time, the Congress studies and responds to the needs of its constituency and groups that represent various interests, through legislative and other actions. This is done by: conducting various hearing and oversight functions, providing financial appropriations, creating new programs, modifying existing programs, requiring specific studies on problems, and reviewing required progress reports. To accomplish these many activities Senators and Representatives have their own personnel and each house of Congress has committees with specialized subcommittees and a variety of staff members who focus on the interests of the respective committees and their leadership.

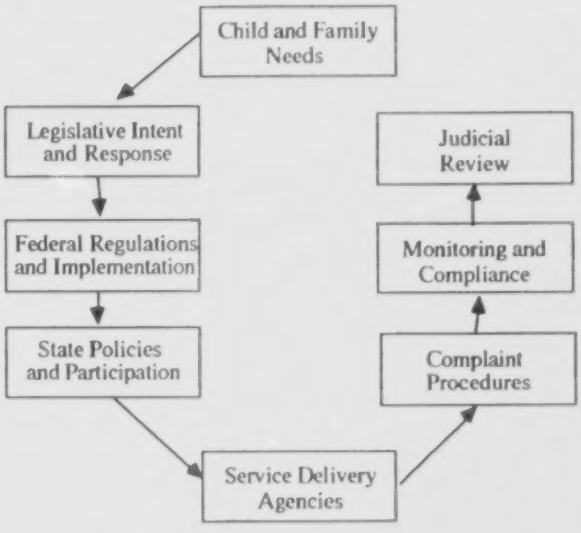

Figure 2.3 Regulatory Processes from Child Needs to Judicial Review.

To enable the evolution of what was to become the Part H program, all the congressional activities listed in the last paragraph occurred. With the ongoing review of the Education of the Handicapped Act and other forms of information gathering, Congress became acutely aware of the unmet needs of infants and toddlers with handicaps and their families. Each house of Congress studied these problems and drafted legislation. To accompany the proposed legislation, each prepared a report describing its finding and propositions. The next chapter of this volume contains the introduction and Part H discussion from the House of Representatives. In the case of

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Public Law 99-457, there was no conference report issued, and the Senate predominately accepted the House version of the legislation. House Report 99-860 is included in this book as the primary documentation of congressional intent.

Why is consideration of congressional intent important after the law has been passed? While there has been a trend towards very specific laws, these still cannot provide all of the specific information for later implementation. Regulators and service providers could, where ambiguities are found or specifics are not present, promulgate the statewide system of early intervention services according to their own perspectives. Documentation of congressional intent is consulted carefully when examining proposed regulations and during the development of legal decisions. Often, hearing officers, administrative law judges, and judges are presented with issues and information that require examination of the original intention of Congress.

In the case of Part H, the legislation had to be flexible for States because of its discretionary nature where States are not required to participate. At the same time, the legislation needed to satisfy a variety of concerns on the part of the public and of advocates that evolved from experience and judicial review of Part B of the Education of the Handicapped Act, initially implemented in the late 1970s.

Federal Regulatory Processes

With the passage of P.L. 99-457 and the signature of President Reagan in late 1986, the responsibility for implementation moved to the Secretary of Education. Within the Department of Education, the Office of Special Education and Rehabilitative Services began to enable the development of the Early Intervention Program for Infants and Toddlers with Handicaps. How does one regulate both the flexibility required for the individual development of Part H in States and the specific entitlements children and families receive when eligible in a participating State? Some individuals have likened the task of the regulation

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developers to "juggling jello." Eleven months after passage, on November 18, 1987, proposed regulations were published and sixty days were allowed for public comment. This period was later extended for thirty additional days. Over 2,500 written comments were received from agencies, individuals, and organizations. An analysis of these comments was included with the final regulations. After the comment period, sixteen months elapsed before the final regulations were published on June 22, 1989.

Nearly two full years, or almost half the developmental time period available to States prior to providing all components of a statewide system of early intervention, had elapsed. The extended time leading to the release of final regulations can be directly attributed to the controversy over some aspects of the program, the strength of individual advocacy groups, and extensive reviews from various government agencies. The prime drafters of the regulations had to deal with legal issues, intense lobbying, and intricate details to complete the process. When they completed the revisions, the length of the regulations had grown from nine pages in the *Federal Register* to twenty, an increase or "mutation" of unprecedented proportions.

One mechanism used by the regulation developers to respond to the extensive public comments was to clarify the regulations with the use of extensive notes. The final regulations contained forty-two notes. While, unlike regulations, such notes are not binding they do provide specific guidance, and will be used, like the legislative history, to consider intent. In general, the notes discuss, cross reference, and give examples. There are occurrences, however, where notes appear to either soften or emphasize the level of expectation established by a section in the regulations (for example, Note 2 after 303.344 appears to reduce the influence of 303.344(e)(ii)).

While the regulations themselves became more extensive in scope, they also included references to other regulations. These references included definitions from EDGAR, the Education Department General Administrative Regulations; confidentiality sections from Part B of the

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Education of the Handicapped Act; and FERPA, the Family Educational Rights and Privacy Act.

This section has discussed the scope and complexity involved in developing the Part H regulations. They have become the source for developing this program and evaluating the activities undertaken by participating States. As rules developed by the executive branch of government, they carry the force of law. Part two of this volume presents these regulations with annotations. The executive branch is still in a position to develop other forms of administrative policy by actions that interpret regulations through official letters and by reviewing and approving state plans.

State Regulation

The Federal regulations require the States to submit plans for participation in the Part H program. These plans must contain a variety of policies, assurances, and procedures developed by the States to meet the Federal expectations. The Federal regulations tell the States what they must do and what conditions they must meet; however, the State plans must indicate how they will do these things and provide assurance that the things will be done.

This presents a very difficult challenge for the States. They must develop the statewide system of early intervention services within two years after they received the detailed final regulatory information. The most compelling part of the State developments is the requirement of their own policy developments, analyzed in Chapter 16. Such policies must: assure such things as the availability of appropriate services for all eligible children, require specifically developed personnel standards, implement family-centered services, demonstrate interagency agreements, and coordinate resources for providing the early intervention system.

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Local Implementation Issues

In participating States, local early intervention service providers must develop their own program policies and procedures to comply with the State's regulations. In some program areas, States will probably tell service providers what is required, again without indicating how it is to be done.

Monitoring and Compliance

Early intervention programs, either the State's program in general or individual service delivery programs within the State, are subject to monitoring activities or investigations with possible findings and required corrective actions. The Federal government monitors the State activities both by reviewing their plans and possibly auditing their programs to see that they are doing what they have assured in the State plan. The State must monitor local providers of early intervention services, in a similar manner.

Complaint Procedures

The Part H regulations require two types of complaint procedures when individuals or agencies feel that some component of the early intervention program is not be properly provided at an individual or more systemic level. Strict requirements for complaint resolution include timely resolution of concerns, because of the critical nature of early development for the child. Complaint procedures may also include some form of mediation for problem resolution, but this cannot interfere with the formal hearing procedures for individual complaints. In the case of formal hearings, an impartial person must hear the case and provide a written decision. Additionally, there is an administrative complaint procedure required for individual or agency or system complaints. Because of the complexity of the Part H program, it is likely that the administrative complaint system may receive systemic complaints

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representing concerns about agencies and early intervention system components.

Judicial Review

Impartial hearing decisions can be appealed to State or Federal courts if a party to the decision feels harmed. The outcomes of such judicial reviews of complaint serve to further interpret and clarify the intent and requirements of laws and their regulations. The outcomes are considered "case law," indicating that findings of the cases establish legal bases for similar situations within the related jurisdictions of the court. At each higher level of judicial review, the precedent created by the case is applicable to a wider geographic area. An example of an area from Part B requiring extensive case law to clarify prior regulations was the need to interpret the meanings of "health services" and "medical services" so that the responsibilities of the local education agency could be determined. The case that set this issue to rest was *Tatro v. Texas*.

After participating States begin the full implementation of the statewide system of early intervention services in 1991, one can expect that some judicial review and resulting case law will be forthcoming. Courts are consistently asked to consider constitutional themes in the litigation they consider, and they will be asked to assure that equal protection and due process are provided to infants and toddlers with handicaps in the implementation of the Part H program.

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This chapter contains two portions of House Report Number 99-860, 15 (1986).

The first two pages discuss the general background and need for the P.L. 99-457 legislation that amended the Education of the Handicapped Act and created the Handicapped Infants and Toddlers program (Part H).

The remaining fourteen pages present the section of the report on Part H.

This report is important because it documents the intent of the congressional committee in developing the legislation.

It provides the first documentation of the program, prior to the passage of the legislation, and will used to assist in the interpretation of the program when later documents are unclear or contradictory.

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BACKGROUND AND NEED FOR THE LEGISLATION

The Education of the Handicapped Act (EHA) is the principle Federal legislation for providing Federal assistance to State and local educational agencies to meet the special educational and related services needs of handicapped children and youth. Central to the Act is part B, the State-formula grant program (The Education for All Handicapped Children Act, Public Law 94-142), which requires each State receiving assistance to provide a free appropriate public education to all handicapped children in the State, regardless of the nature or severity of their handicapping conditions.

In addition to the State-formula grant program, EHA authorizes discretionary grant programs aimed at supporting and improving the direct services provided under part B of EHA, including such activities as: research, demonstration, training, technical assistance, dissemination, and model projects.

A complete history of the discretionary programs as well as the major changes made by the 98th Congress are contained in House Report No. 98-410, accompanying H.R. 3435, the Education of the Handicapped Act Amendments of 1983. Major accomplishments made under part B and the discretionary programs are set out in the Seventh and Eighth Annual Reports to Congress on the Implementation of the Education of the Handicapped Act.

Based on testimony by witnesses at the seven hearings, discussions with experts from around the country, a review of reports submitted by the Department of Education, a report entitled "Toward Independence" issued by the National Council on the Handicapped, and a review of the literature, the Committee finds that there is a need to amend the Education of the Handicapped Act to more adequately address the needs of handicapped pre-schoolers (aged three to five, inclusive).

Because of advances in research methodology, instrumentation, and theory, educators and behavioral scientists have come to view even very young infants as capable of participating in complex interactions with their world. For example, we now believe that newborns have a functioning perceptual system capable of intersensory coordination, that they are capable of making multiple categorizations, that they possess both central and peripheral vision at birth, can coordinate visual and auditory input by age 2-1/2 months, show evidence of recognition memory by 4 months, and are able to recognize relatively abstract two-dimensional stimuli by 5 months.

Infants are also competent and capable of exhibiting complex and voluntary motor activity much earlier than once thought. For example, researchers have found that infants as young as 12 months of age were able to use pointing behavior to call interesting objects to the attention of others, and that over the last half of the first year, infants were able to master the imitation of several complex motor behaviors, including touching their ear (7 months), shaking a toy (9-1/2 months), and clapping (12 months). Thus, social competence can develop very early in life.

However, in addition to participating in social relationships, infants are also capable of initiating and maintaining social interactions at a very early age. There is clear evidence to suggest that sociable infants are capable of eliciting more stimulation from caregivers and that this heightened social competence leads to accelerated cognitive development.

Thus, the infant's developing physical, cognitive, and social competencies are very important. Because of our recognition of the early appearance of these and other competencies, infants increasingly are being viewed as active organizers of their experience and not as passive and helpless creatures. Likewise, such recognition has also made it more feasible and tenable to develop early successful intervention approaches for handicapped infants and toddlers.

The Committee, therefore, concludes that an overwhelming case exists for expanding and improving the provision of early intervention and preschool programs. The Committee's conclusions comport with the Department's findings in its Seventh Annual Report to Congress:

> "Studies of the effectiveness of preschool education for the handicapped have demonstrated beyond doubt the economic and educational benefits of programs for young handicapped children. In addition, the studies have shown that the earlier intervention is started, the greater is the ultimate dollar savings and the higher is the rate of educational attainment by these handicapped children."

More specifically, testimony and research indicate that early intervention and preschool services accomplish the following:

(1) help enhance intelligence in some children;

(2) produce substantial gains in physical development, cognitive development, language and speech development, psycho-social development and self-help skills;

(3) help prevent the development of secondary handicapping conditions;

(4) reduce family stress;

(5) reduce societal dependency and institutionalization;

(6) reduce the need for special class placement in special education programs once the children reach school age; and

(7) save substantial costs to society and our nation's schools.

In addition, the Committee concludes that the discretionary programs continue to serve as an essential support system to the State-formula grant program. Changes are made to improve the current framework.

The report notes a need to amend the Education of the Handicapped Act to more adequately address the needs of handicapped pre-schoolers and reflects on the fact that competence can develop very early in life.

It acknowledges the development and effectiveness of early intervention programs and cites the findings of the committee from the testimony and research that was reviewed.

It indicates that this represents changes to improve the current framework of the discretionary grant programs.

Beyond adding Part H, the program for children with handicaps from age three through five was also revised.

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This section describes the Part H portion of House Resolution 5520.

It is noted as a discretionary program.

Congress finds an urgent need to enhance the development of these children and families at the same time as minimizing educational costs and institutionalization.

It declares this as a new policy of the United States.

This section provides a definition of "Handicapped Infants and Toddlers" and clarifies the meaning of some of the phrases in the definition.

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EXPLANATION OF H.R. 5520

TITLE I--HANDICAPPED INFANTS AND TODDLERS

Section 101 of the bill adds part H to the Education of the Handicapped Act (the Act) under which a new discretionary program is established to provide early intervention necessary to meet the special needs of handicapped infants and toddlers and their families.

Findings and Policy

New section 671 of the Act contains the findings and policy of the new part. Congress finds an urgent and substantial need to: enhance the development of handicapped infants and toddlers and minimize their potential for developmental delay; reduce the educational costs to our society, including our schools; minimize the likelihood of institutionalization; and enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps.

It is, therefore, the policy of the United States to provide financial assistance to States to: develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for all handicapped infants and toddlers and their families; facilitate coordination of payments for early intervention services from various public and private sources; and enhance its capacity to provide quality early intervention services and expand and improve existing services.

Definition of the Term "Handicapped Infants and Toddlers"

New section 672 of the Act defines the term "handicapped infants and toddlers" to mean individuals from birth to age two, inclusive, who need early intervention services because they are (1) experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development, psycho-social development, or self-help skills, or (2) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

The phrase "birth to age two, inclusive" means infants and toddlers from birth until they reach their third birthday. However, this provision shall not be construed to prohibit an agency from continuing to provide services where a child turns three during the summer and services provided by a local educational agency do not commence until September. Where the local provider of early intervention services and the local educational agency are not the same, it is essential that the agencies coordinate their efforts to transition the child to the special education system operated by the local educational agency.

The phrase "have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay" is included to enable States to serve categories of infants and toddlers who will need early intervention services even though many will do not exhibit developmental delays at the time of diagnosis.

Examples, include: Down Syndrome and other chromosomal abnormalities which are likely to result in mental retardation; severe microcephaly; Cornelia de Lange Syndrome; sensory impairments; Rubenstein-Taybi Syndrome; Fetal Alcohol Syndrome; Epilepsy; and Inborn Errors of Metabolism.

The term may also include, at a State's discretion, individuals from birth to age two, inclusive, who are "at risk" of having substantial development delays if early intervention services are not provided. The phrase "at risk" includes infants and toddlers who are not otherwise covered by the general definition described above. See Tjossem, Theodore. Early intervention: Issues and Approaches. In Tjossem, T., ed. Intervention Strategies for High Risk and Handicapped Children. Baltimore, University Park Press, 1976. p.5.

This paragraph indicates that the term may, at a State's discretion, include children "at risk" of having developmental delays.

The term "developmental delay" has the meaning given such term by a State. In providing this discretion to the state, the Committee wishes to emphasize that it is not our intent to permit a State to totally ignore or establish standards of measurement or other definitional provisions that preclude addressing any one of the five developmental areas included in the definition. Thus, it is expected that the definition will encompass levels of functioning in all five developmental areas.

States will determine the definition, but it must encompass all five developmental areas.

Definition of the Term "Early Intervention Services"

The term "early intervention services" means developmental services which satisfy seven criteria. First, such services are provided under public supervision. This means that ultimate responsibility for the provision of services remains with the lead agency designated or established by the Governor. The fact that ultimate responsibility rests with the lead agency should not be construed in any way to limit the agency's authority to make arrangements with local service providers (public or private) who in turn may contract or make arrangements with others for the provision of services.

This segment defines "early intervention services" and specific features of those services: public supervision; no cost unless provided for; to meet developmental needs; meeting the standards of the State and Part H; and including examples of a variety of early intervention services.

Second, early intervention services must be provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees.

Third, early intervention services are designed to meet a handicapped infant's or toddler's developmental needs in the following areas: physical development, cognitive development, language and speech development, psycho-social development, and self-help skills. Fourth, such services must meet the standards of the State, including the requirements of the new part.

Fifth, early intervention services include, but are not limited to: family training, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; case management services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; and health services necessary to enable the infant or toddler to benefit from the other early intervention services.

The early intervention services included in the bill are not meant to be exhaustive; rather they are intended to be illustrative of the types of services a handicapped infant or toddler may receive under this program.

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This defines "case management services" as services to enable families to access appropriate services.

Specific features of case management are discussed and examples given.

The phrase "case management services" includes services provided to families of handicapped infants and toddlers to assist them in gaining access to early intervention services and other services identified in the infant or toddlers' individualized family service plan; to ensure timely delivery of available services; and to coordinate the provision of early intervention services with other services (such as medical services for other than diagnostic and evaluation purposes) which the infant or toddler needs or is being provided.

The Committee intends that case management be an active, ongoing process of continuously seeking the appropriate services or situations to benefit the development of each infant or toddler being served for the duration of each child's eligibility.

Specific case management services include: coordinating the performance of evaluations; assisting families in identifying available service providers; participating in the development of the IFSP; coordinating and monitoring the delivery of available services; informing families of the availability of advocacy services available to the family; coordinating with the medical and health providers; and facilitating the development of a transition plan to preschool services, where appropriate.

"Health services" are defined.

The term "health services necessary to benefit from other early intervention services" does not include such services as: surgical or purely medical procedures such as cleft palate surgery; surgery for club foot; management of congenital heart ailments; management of cystic fibrosis; and shunting of hydrocephalus.

Services are to be provided by qualified personnel.

Sixth, early intervention services are provided by qualified personnel, including, but not limited to, special educators, speech and language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, and nutritionalists. This list is not meant to be exhaustive. Thus, for example, physicians would be considered qualified personnel with respect to the performance of assessments and diagnoses.

Services will conform with an individualized family service plan.

Seventh, early intervention services are provided in conformity with an individualized family service plan, except that because infant development is relatively rapid and, therefore, undue delay could be potentially harmful, such services may commence before the completion of the initial plan with the parent's consent.

General Authority

These sections of the report note the authority to establish and continue this new grant program.

New section 673 of the Act provides general authority to the Secretary of Education to make grants to States to assist the States (to) develop and implement a comprehensive, coordinated, multi- disciplinary program of early intervention services for handicapped infants and toddlers and their families. This program is designed to build upon existing State systems of serving handicapped infants and toddlers and to facilitate the development of systems in States desiring to serve this population.

Continuing Authority

New section 674 of the Act specifies the general criteria a State must satisfy in order to be eligible for assistance under the new part H -- the

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State must have established (which term includes the designation of) a State Interagency Coordinating Council.

New Section 675 of the Act specifies the criteria governing continuing eligibility for assistance under the new part H. In order to be eligible for the first or second year of a State's participation under part H, a State must include in its application assurances that funds will be used to assist the State to plan, develop, and implement the statewide system.

This page of the report discusses the criteria governing the continued eligibility of States under the program.

It is expected that funds will be used under this part for the first three years to accomplish many of the same objectives expected to have been accomplished under the planning, development, and implementation grants authorized under section 623(b) of current law.

In order to be eligible for a grant under part H for the third year of a State's participation, a State must include information and assurances demonstrating that the State has adopted a policy which incorporates all of the components of a statewide system of early intervention services (unless the State has obtained a waiver from the Federal Government).

The statewide system must be in effect (except as provided in the next sentence) before the beginning of the fourth year. With respect to the development and implementation of an individualized family service plan (required by section 676(b)(4)), in the fourth year the State need only: conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services. Other early intervention services need not be made available to all handicapped infants and toddlers until the beginning of the fifth year of a State's participation in the program. (See below for a discussion of the components of the statewide system of early intervention services).

All portions of the statewide program must be in effect in the fourth year except for the implementation of the IFSP, which is required in the fifth year.

It is expected that the State application will include all of the policies constituting the statewide system. This requirement may be satisfied by including a copy of the applicable statute or regulations.

State applications must document all policies constituting the system.

The Secretary may permit a State to continue to receive assistance for the third year, even if it has not adopted the policy establishing the statewide system if the State demonstrates that it has made a good faith effort to adopt such a policy, the reasons for its failure and the steps it will take to ensure its adoption, and as assurance that the policy will go into effect before the beginning of the fourth year. For example, the secretary may grant a waiver if the policy is awaiting action by the State legislature, but the legislative session does not commence until after the date the State's application must be submitted.

Certain provisions are made for State participation while policies are being developed.

In order to be eligible for assistance for the fifth and succeeding years of a State's participation under part H, the State must have in effect the statewide system of early intervention services required by section 676, including, among other things, a policy that appropriate early intervention services will be available to all handicapped infants and toddlers in the State.

Components of a Statewide System

This specifies the minimum components of the system.

New section 676 of the Act specifies the minimum components of a statewide system consisting of a comprehensive, coordinated, multidisciplinary, interagency program providing early intervention

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services for all handicapped infants and toddlers and their families.

A definition of "developmental delay."

First, the statewide system must include the definition of the term "developmentally delayed" to be used by the State in carrying out the program.

Timetables for providing services.

Second, the system must include timetables for ensuring that all appropriate early intervention services will be made available to all handicapped infants and toddlers in the State before the beginning of the fifth year of a State's participation under part H.

Multidisciplinary evaluation.

Third, for each handicapped infant and toddler in the State, the statewide system must include the performance of a timely comprehensive multidisciplinary evaluation of the functioning of each handicapped infant and toddler and the needs of the families to appropriately assist in the development of the handicapped infant and toddler.

IFSPs and case management.

Fourth, for each handicapped infant and toddler in the State, the statewide system must include the development of an individualized family service plan, including the provision of case management services.

Child find and referral system.

Fifth, the system must include a comprehensive child find system that includes a system for making referrals to service providers. The system of referrals must include timelines and provide for the participation by primary referral sources. "Primary referral sources" include hospitals, physicians, other health care providers, public health facilities, and day care facilities.

The Committee recognizes the existing and long established child find procedures established under part B may be an appropriate vehicle for satisfying this requirement. However, such procedures must be modified or expanded (if necessary) to include a system of referrals and the system must include timelines and provide for the participation by primary referral sources.

Public awareness program.

Sixth, the system must include a public awareness program focusing on early identification of handicapped infants and toddlers.

Directory of services in the State.

Seventh, the system must include a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

Personnel development.

Eighth, the system must include a comprehensive system of personnel development. The system must include training of public and private service providers, primary referral sources, and persons who will provide services after receiving such training. Services and training may be provided directly by the State or through a grant, contract, or other arrangement with other entities.

The Committee believes that this component is one of the most important in the system. Without qualified personnel, services will not effect the successes envisioned by the program. To the extent that a State's current system of personnel development established under part B already includes the training of the personnel described above to provide early intervention services, consistent with this part, such a State would be considered in compliance with this section.

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Ninth, the system must include a single line of authority in a lead agency designated or established by the Governor to carry out: the general administration, supervision, and monitoring of programs and activities; the identification and coordination of all available resources within the State from Federal, State, local, and private sources and the assignment of financial responsibility to the appropriate State agency; the resolution of State interagency disputes and procedures for ensuring the provision of services pending the resolution of such disputes; and the entering into formal State interagency agreements that define the financial responsibility of each State agency for paying for early intervention services (consistent with State law) and include, among other things, procedures for resolving disputes.

A lead agency responsible for the program to avoid "buckpassing."

Without this critical requirement, there is an abdication of responsibility for the provision of early intervention services for handicapped infants and toddlers. Although the bill recognizes the importance of interagency responsibility for providing or paying for appropriate services, it is essential that ultimate responsibility remain in a lead agency, so that buckpassing among State agencies does not occur to the detriment of the handicapped infant or toddler.

In determining whether an entity satisfies the requirements described above, the Secretary must consider the functions performed by the entity and not its title. For example, in Texas the State legislature has established the Interagency Council on Early Childhood Intervention which is akin to the lead agency under this new section of the Act.

In States serving significant numbers of Indian handicapped infants and toddlers, the lead agency must consult with and obtain input from Tribal education offices/committees, BIA schools, tribal schools, head start programs and other providers of service at the local and State level to ensure that the needs of these infants and toddlers are considered and accounted for in the statewide system.

Indian handicapped infants and toddlers are to be accounted for in the statewide system.

Tenth, the system must include a policy pertaining to the contracting or making of other arrangements with local service providers, i.e., those entities with which the State makes arrangements for, among other things, the infant or toddler's assessment; the development of an individualized family service plan; and the provision of services. The policy must include the contents of the application used and the conditions of the contract or other arrangements.

A policy for contracting for services.

It is the Committee's intent that the policy developed by the State must be consistent with the provisions of this part. Thus, for example, it is the Committee's intent that an individualized family service plan developed by a local service provider will be consistent with the provisions of section 677 of part H.

Eleventh, the system must include a procedure for securing timely reimbursement of funds used under part H in accordance with section 681 (a).

A procedure for timely reimbursement of funds.

Twelfth, the system must include procedural safeguards with respect to early intervention programs.

Procedural safeguards.

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Personnel standards including specific policies and procedures.

Thirteenth, the system must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of part H are appropriately and adequately prepared and trained including: (1) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which they are providing early intervention services, and (2) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.

Data collection.

Finally, the system must include the establishment of a system for compiling data regarding the early intervention programs (which may be based in part on a sampling of data).

This section discusses the provisions for an Individualized Family Service Plan. It includes assessment of needs; identification of services; development and review of IFSPs; specific content to be included in the IFSP; and steps for the transition of the child to local education agencies.

Individualized Family Service Plan

New section 677 of the Act describes the individualized family service plan. Under subsection (a), each handicapped infant or toddler and the infant's or toddler's family must receive a multidisciplinary assessment of unique needs and the identification of services appropriate to meet such needs and a written individualized family service plan developed by a multidisciplinary team, which includes the parents or guardian. The Committee wishes to make it clear that the parents or guardian may decide to invite someone to the meeting to assist them (to) present their positions.

Under subsection (b), the individualized family service plan must be evaluated at least once a year and the family must be provided a review of the plan at least at 6-month intervals (or more often where appropriate based on infant, toddler, and family needs) to determine the degree to which progress toward achieving the outcomes (is) being made and whether modifications or revisions of the outcomes or services are necessary.

Under subsection (c), the individual family service plan must be developed within a reasonable time after the assessment. However, with the parent's consent, early intervention services may commence prior to the completion of the assessment. The authority to allow services to commence prior to the completion of the assessment should be the exception and not the rule. Further, this authority should not be used as a means for systematically circumventing the obligation to complete the assessment and develop the plan within a reasonable time.

Under subsection (d), the individualized family service plan must be in writing and contain the following statements and information. First, a statement of the infant's or toddler's present levels of physical development, cognitive development, language and speech development, psycho-social development, and self-help skills based on professionally acceptable objective criteria. Second, a statement of the family's strengths and needs relating to enhancing the development of the family's handicapped infant or toddler.

Third, a statement of the major outcomes expected to be achieved for the infant or toddler and the family; the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the

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outcomes or services are necessary.

Fourth, a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency and intensity and the method of delivering services. Fifth, the projected dates for initiation of services and the anticipated duration of such services.

Sixth, the name of the case manager from the profession most immediately relevant to the infant's or toddler's or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons.

Finally, the steps to be taken supporting the transition of the handicapped infant or toddler to services provided under part B of the Act to the extent special education and related services are considered appropriate. Thus, steps to transition a child are unnecessary if the child, as a result of early intervention services, does not require special education and related services.

The Committee wishes to emphasize that the provision regarding the individualized family service plan does not require that any agency or person be held accountable if an infant or toddler does not achieve the growth projected, i.e., the plan does not constitute a guarantee of results. However, agencies and persons are not relieved of the responsibility of making good faith efforts to assist the infant or toddler in achieving the outcomes or the right to complain if the parent feels that these efforts are not being made.

This paragraph discusses accountability issues with the IFSP.

State Applications and Assurances

New section 678 of the Act sets forth the policies governing the submission of a State's application and statement of assurances and the approval by the Secretary. With respect to the application, the State must include, among other things, information demonstrating that the State has provided public hearings, adequate notice of such hearings, and an opportunity for comment to the general public before the submission of such application and before the adoption by the State of the policies described in such application, and a summary of the public comments and the State's responses. It is the Committee's intent that public input be obtained prior to the formulation of a State policy; and not simply serve as a rubber stamp for such a policy.

This section includes the activities and assurances the State must complete to apply for and comply with the program.

The application must also describe the procedure used to ensure an equitable distribution of resources made available under part H among all geographic areas within the State. The State must also submit a statement of assurances, which may be submitted once and remain on file with the Secretary and be revised only when considered necessary by the Secretary.

No State may receive a grant under this part unless the Secretary has approved the application and statement of assurances of that State. The Secretary may not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of the part.

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The acceptable uses of funds are noted in this paragraph.

Uses of Funds

New section 679 of the Act specifies that in addition to using funds under part H to plan and develop the statewide system, a State may use such funds to implement the system, including the provision of direct services that are not otherwise provided from other public or private sources and to expand and improve on services for handicapped infants and toddlers that are otherwise available.

The requirements for providing appropriate procedural safeguards are presented in this section.

Procedural Safeguards

New section 680 sets out the procedural safeguards which must provide, at a minimum, for: the timely resolution of administrative complaints by parents and the right to appeal to State or Federal court; the right to confidentiality of personally identifiable information; the opportunity to examine records; procedures to protect the right of the handicapped infant and toddlers whenever the parents or guardian of the child are not known, unavailable or the child is a ward of the State; including the assignment of a surrogate, and written prior notice to the parents or guardian under specified circumstances; procedures for ensuring that the notice is in the parent's or guardian's native language; and procedures to ensure the provision of services pending the resolution of the complaint.

Two types of complaint procedures are provided under this section.

The Committee wishes to emphasize that there are two types of complaints a parent might file under this part. The first type includes complaints concerning the State's compliance with those sections of the law applicable to the parent's or guardian's particular infant or toddler. For example, a parent's complaint might assert a failure to perform an appropriate assessment; a failure to develop an appropriate individualized family service plan; or a failure to make available a particular early intervention service specified in the individualized family service plan, such as special instruction.

It is the Committee's intent that the procedure for resolving this category of complaints include the presentation and examination of all information relevant to the issues and a presentation of relevant viewpoints before an impartial individual with knowledge of the law and the needs of and services available for handicapped infants and toddlers.

It is also the Committee's intent that the procedures developed by the State result in speedy resolution of complaints because an infant's development is rapid and, therefore, undue delay could be potentially harmful. Thus, it would be acceptable for the impartial individual to attempt to mediate the complaint. However, if such an attempt is unsuccessful, it would be expected that the record be retained and that the decision be in writing to allow a parent, who is so inclined, to appeal to the courts.

The second complaint system includes more systemic issues.

The Secretary may approve any system that includes the full set of procedural safeguards contained in part B.

The second type of complaint includes more systemic issues such as the State's failure to develop a statewide system which includes the components set out in new section 676 of the Act. This would include the

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failure to develop an impartial system for resolving complaints. It is the Committee's intent that the procedure for resolving this category of complaints must be consistent with the system described in the Education Department General Administrative Regulations (34 CFR 76.7880 et seq.). Of course, it is also expected that the Department of Education will develop procedures for resolving parental complaints of the systemic type described above.

The second system should be consistent with EDGAR Regulations.

Payor of Last Resort

New section 681 of the Act specifies that funds provided under part H may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source, but for the enactment of this part. However, the State may use part H funds to pay the provider of such services pending reimbursement by the agency which has ultimate responsibility for the payment whenever considered necessary to prevent the delay in the receipt of the appropriate early intervention services by the handicapped infant or toddler. The State must develop a procedure for securing timely reimbursement as part of the statewide system.

This section discusses the financial expectations for the use of Part H funds.

The committee was particularly concerned about achieving timely reimbursement for services and made special provisions in this area.

Consistent with the above requirement, new section 681 also specifies that nothing in part H should be construed to permit the State to reduce medical or other assistance available or to alter eligibility (to the detriment of handicapped infants or toddlers) under Title V (relating to maternal and child health) or Title XIX of the Social Security Act (relating to Medicaid for handicapped infants and toddlers) within the State.

It is the intent of Congress that the enactment of this legislation should not be construed as a license to any agency (including the lead agency and other agencies in the State), to withdraw funding for services that currently are or would be made available to handicapped infants and toddlers but for the existence of this legislation. Rather, the Committee intends to provide the impetus to facilitate interagency agreements with respect to service delivery to handicapped infants and toddlers and their families.

No agency is to withdraw current funding for early intervention services.

Thus, it is our intent that other funding sources continue; that there be greater coordination among agencies regarding the payment of costs; and that funds made available under part H be used only for direct services for handicapped infants and toddlers that are not otherwise provided from other public or private sources and to expand and improve on services that are not otherwise available.

Coordination of resources is clearly intended and specific programs are identified.

For example, one major Federal program exists which is aimed at the reduction of serious developmental and health risks. The Early and Periodic Screening, Diagnosis and Treatment program (EPSDT) was established in 1967 to discover, as early as possible, the ills that handicap our children and "to provide continued follow up and treatment so that handicaps do not go neglected." Strong and specific program linkages with EPSDT must be made in a State if we are going to accomplish the purposes of this part.

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The State Interagency Coordinating Council is established and its roles and functions specified for advising and assisting the lead agency.

State Interagency Coordinating Council

New section 682 provides for the establishment (which includes the designation) of a State Interagency Coordinating Council, and specifies its composition, rules governing its meetings, its management authority, its functions and responsibilities, rules governing conflict of interest and the use of existing councils.

It is the Committee's expectation that the Council will play a central role in accomplishing the purposes of this part. The Committee recognizes that State level interagency cooperation has been instrumental in the successes which have been achieved in meeting the needs of handicapped infants and toddlers and that such cooperation is essential. Thus, for example, the Council must provide meaningful advice and assist the lead agency (to) develop and implement the policies constituting the statewide system of coordinated, comprehensive, multidisciplinary programs which (provide) appropriate early intervention services to handicapped infants and toddlers and their families. Further, the persons representing the State agencies should have sufficient authority to represent the agency. The appointment of representatives of primary referral sources should facilitate the effective functioning of the Council.

Provisions are made for existing early intervention councils.

To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council called for in the Act, such Council shall be considered to be in compliance with the law. Within 4 years, after the date the State accepts funds under section 673, such State must establish a Council that complies in full with this section.

Federal Administration

Two sections deal with the Federal administration of the program and the allocation of funds to the participating States.

New section 683 of the Act specifies the policies governing Federal administration.

Allocation of Funds

New section 684 specifies the policies governing the allocation of funds among the States. Under the bill, the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States, except that no State may receive less than 0.5 percent.

The Committee fully expects to review the use of census data for making the allocation among States when the Congress reauthorizes this part in five years. Particular consideration will be given to the use of child count procedures comparable to those used under part B.

This section also includes an allocation to the Secretary of the Interior of 1.25 percent of the amount available to all States under part H for that fiscal year for the provision of early intervention services to handicapped infants and toddlers and their families. The Committee expects that interagency agreements will be entered into among appropriate agencies such as Indian Health Service, BIA Social Services, BIA office of Education and the Department of Education. Too often handicapped Indians are "lost in the bureaucratic shuffle" while a determination is being made as to who is responsible for which services. Special attention is being given in these interagency agreements to the use of homebound

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teachers and utilization of a strong family based component.

Authorization of Appropriations

New section 685 of the act authorizes to be appropriated to carry out part H $50 million for fiscal year 1987, $75 million for fiscal year 1988, and such sums as may be necessary for each of the three succeeding fiscal years.

Authorizes appropriations of funds for this program.

Study of Services; Coordination of Actions

Section 101(b) of the bill mandates a joint study to be conducted by the Secretary of Education and the Secretary of Health and Human Services of the federal funding sources, service gaps, and problems with service delivery for early intervention programs and provides for the coordination of interagency actions. A joint report must be submitted to Congress no later than 18 months after the date of the enactment of this Act describing the findings of the study and the joint actions taken.

Requires a study to be conducted on funding sources, service gaps, and problems with service delivery.

This study was reported to Congress in January 1989. It is entitled, "Meeting the Needs of Infants and Toddlers with Handicaps."

It is the Committee's expectation that the Department of Education will take the lead in carrying out this section. By including this study, it is Congress' expectation that the various Federal agencies will develop a uniform policy that ensures maximum availability of funding for early intervention services from existing sources.

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This section adds a new Part H to the Education of the Handicapped Act establishing a discretionary program focusing on the special needs of handicapped infants and toddlers and their families.

This section (671) contains the findings and policy of the new part.

PART H--HANDICAPPED INFANTS AND TODDLERS

FINDINGS AND POLICY

SEC. 671.

(a) FINDINGS.--The Congress finds that there is an urgent and substantial need--

(1) to enhance the development of handicapped infants and toddlers and to minimize their potential for developmental delay,

(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after handicapped infants and toddlers reach school age,

(3) to minimize the likelihood of institutionalization of handicapped individuals and maximize the potential for their independent living in society, and

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps.

(b) POLICY--It is therefore the policy of the United States to provide financial assistance to States--

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for handicapped infants and toddlers and their families,

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

(3) to enhance its capacity to provide quality early intervention services being provided to handicapped infants, toddlers, and their families.

This section (672) contains four definitions: "handicapped infants and toddlers," "early intervention services," "developmental delay" and "council."

DEFINITIONS

SEC. 672. As used in this part--

(1) The term "handicapped infants and toddlers" means individuals from birth to age 2, inclusive, who need early intervention services because they--

(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Cognitive development, physical development, language and speech development, psychosocial development, or self-help skills, or

(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay. Such term may also include, at a State's discretion, individuals from birth to age 2, inclusive, who are at risk of having substantial developmental delays if early intervention services are not provided.

(2) "Early intervention services" are developmental services which--

(A) are provided under public supervision,

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees,

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(C) are designed to meet a handicapped infant's or toddler's developmental needs in any one or more of the following areas:
  (i) physical development,
  (ii) cognitive development,
  (iii) language and speech development,
  (iv) psycho-social development, or
  (v) self-help skills,
(D) meet the standards of the State, including the requirements of this part,
(E) include--
  (i) family training, counseling, and home visits,
  (ii) special instruction,
  (iii) speech pathology and audiology,
  (iv) occupational therapy,
  (v) physical therapy,
  (vi) psychological services,
  (vii) case management services,
  (viii) medical services only for diagnostic or evaluation purposes,
  (ix) early identification, screening, and assessment services, and
  (x) health services necessary to enable the infant or toddler to benefit from the other early intervention services,
(F) are provided by qualified personnel, including--
  (i) special educators,
  (ii) speech and language pathologists and audiologists,
  (iii) occupational therapists,
  (iv) physical therapists,
  (v) psychologists,
  (vi) social workers,
  (vii) nurses, and
  (viii) nutritionists, and
(G) are provided in conformity with an individualized family service plan adopted in accordance with section 677.

(3) The term "developmental delay" has the meaning given such term by a State under section 676(b)(1).

(4) The term "Council" means the State Interagency Coordinating Council established under section 682.

GENERAL AUTHORITY

SEC. 673. The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 684) to assist each State to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for handicapped infants and todddlers and their families.

This section (673) provides the authority for the Secretary of Education to make grants to each State under Part H.

GENERAL ELIGIBILITY

SEC. 674. In order to be eligible for a grant under section 673 for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 678) that the State has established a State Interagency Coordinating Council which meets the requirements of section 682.

This section (674) specifies that States must establish an Interagency Coordinating Council to be eligible for a grant.

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Section 675 specifies the criteria governing continuing eligibility for assistance under Part H.

CONTINUING ELIGIBILITY

SEC. 675

(a) FIRST TWO YEARS--In order to be eligible for a grant under section 673 for the first or second year of a State's participation under this part, a State shall include in its application under section 678 for that year assurances that funds received under section 673 shall be used to assist the State to plan, develop, and implement the statewide system required by section 676.

(b) THIRD AND FOURTH YEAR--

(1) In order to be eligible for a grant under section 673 for the third or fourth year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that--

(A) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with section 676 or obtained a waiver from the Secretary under paragraph (2),

(B) funds shall be used to plan, develop, and implement the statewide system required by section 676, and

(C) such statewide system will be in effect no later than the beginning of the fourth year of the State's participation under section 673, except that with respect to section 676(b)(4), a State need only conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services.

(2) Notwithstanding paragraph (1), the Secretary may permit a State to continue to receive assistance under section 673 during such third year even if the State has not adopted the policy required by paragraph (1)(A) before receiving assistance if the state demonstrates in its application--

(A) that the state has made a good faith effort to adopt such a policy,

(B) the reasons why it was unable to meet the timeline and the steps remaining before such a policy will be adopted, and

(C) an assurance that the policy will be adopted and go into effect before the fourth year of such assistance.

(c) FIFTH AND SUCCEEDING YEARS.--In order to be eligible for a grant under section 673 for a fifth and any succeeding year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required by section 676 and a description of services to be provided under section 676(b)(2).

EXCEPTION--Notwithstanding subsections (a) and (b), a State which has in effect a State law, enacted before September 1, 1986, that requires the provision of free appropriate public education to handicapped children from birth through age 2, inclusive, shall be eligible for a grant under section 673 for the first through fourth years of a State's participation under this part.

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REQUIREMENTS FOR STATEWIDE SYSTEM

SEC. 676.

(a) IN GENERAL.--A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all handicapped infants and toddlers and their families shall include the minimum components under subsection (b).

(b) MINIMUM COMPONENTS.--The statewide system required by subsection (a) shall include, at a minimum--

(1) a definition of the term "developmentally delayed" that will be used by the State in carrying out programs under this part,

(2) timetables for ensuring that appropriate early intervention services will be available to all handicapped infants and toddlers in the state before the beginning of the fifth year of a State's participation under this part,

(3) a timely, comprehensive, multidisciplinary evaluation of the functioning of each handicapped infant and toddler in the State and the needs of the families to appropriately assist in the development of the handicapped infant or toddler,

(4) for each handicapped infant and toddler in the State, an individualized family service plan in accordance with section 677, including case management services in accordance with such service plan,

(5) a comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for the participation by primary referral sources,

(6) a public awareness program focusing on early identification of handicapped infants and toddlers,

(7) a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State,

(8) a comprehensive system of personnel development,

(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out--

(A) the general administration, supervision, and monitoring of programs and activities receiving assistance under section 673 to insure compliance with this part,

(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

(C) the assignment of financial responsibility to the appropriate agency,

(D) the development of procedures to ensure that services are provided to handicapped infants and toddlers and their families in a timely manner pending the resolution of any disputes among public agencies or service providers,

(E) the resolution of intra- and interagency disputes, and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(10) a policy pertaining to the contracting or making of other

This section (676) specifies the minimum components of a statewide system of early intervention services.

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arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements,

(11) a procedure for securing timely reimbursement of funds used under this part in accordance with section 681(a),

(12) procedural safeguards with respect to programs under this part as required by section 680, and

(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including--

(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

(14) a system for compiling data on the numbers of handicapped infants and toddlers and their families in the State in need of appropriate early intervention services (which may be based on a sampling of data), the numbers of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary.

Section 677 establishes and describes the individualized family service plan (IFSP).

INDIVIDUALIZED FAMILY SERVICE PLAN

SEC. 677.

(a) ASSESSMENT AND PROGRAM DEVELOPMENT.-- Each handicapped infant or toddler and the infant or toddler's family shall receive--

(1) a multidisciplinary assessment of unique needs and the identification of services appropriate to meet such needs, and

(2) a written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d).

(b) PERIODIC REVIEW.--The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant and toddler and family needs).

(c) PROMPTNESS AFTER ASSESSMENT-- The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parent's consent, early intervention services may commence prior to the completion of such assessment.

(d) CONTENT OF PLAN-- The individualized family service plan shall be in writing and contain--

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, and self-help skills, based on acceptable objective criteria,

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(2) a statement of the family's strengths and needs relating to enhancing the development of the family's handicapped infant or toddler,
(3) a statement of the major outcomes expected to be achieved for the infant and toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes are being made and whether modifications or revisions of the outcomes or services are necessary,
(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,
(5) the projected dates for initiation of services and the anticipated duration of such services,
(6) the name of the case manager from the profession most immediately relevant to the infant's and toddler's or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons, and
(7) the steps to be taken supporting the transition of the handicapped toddler to services provided under part B to the extent such services are considered appropriate.

STATE APPLICATION AND ASSURANCES

Section 678 describes the requirements for the submission of a State's application and the assurances it must provide. It concludes with the approval process by the Secretary of Education.

SEC. 678.
(a) APPLICATION.-- Any State desiring to receive a grant under section 673 for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain--
(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 673,
(2) information demonstrating eligibility of the State under section 674.
(3) the information or assurances required to demonstrate eligibility of the State for the particular year of participation under section 675, and
(4) (A) information demonstrating that the State has provided
(i) public hearings,
(ii) adequate notice of such hearings, and
(iii) an opportunity for comment to the general public before the submission of such application and before the adoption by the State of the policies described in such application, and
(B) a summary of the public comments and the State's responses,
(5) a description of the uses for which funds will be expended in accordance with this part and for the fifth and succeeding fiscal years a description of the services to be provided,
(6) a description of the procedure used to ensure an equitable distribution of resources made available under this part among all geographic areas within the State, and
(7) such other information and assurances as the Secretary may reasonable require by regulation.

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(b) STATEMENT OF ASSURANCES.-- Any State desiring to receive a grant under section 673 shall file with the Secretary a statement at such time and in such manner as the Secretary may reasonably require by regulation. Such statement shall--

(1) assure that funds paid to the State under section 673 will be expended in accordance with this part,

(2) contain assurances that the State will comply with the requirements of section 681,

(3) provide satisfactory assurance that the control of funds provided under section 673, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property,

(4) provide for

(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and

(B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part,

(5) provide satisfactory assurance that Federal funds made available under section 673

(A) will not be commingled with State funds, and

(B) will be so used as to supplement and increase the level of State and local funds expended for handicapped infants and toddlers and their families and in no case to supplant such State and local funds,

(6) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under section 673 to the State, and

(7) such other information and assurances as the Secretary may reasonably require by regulation.

(c) APPROVAL OF APPLICATION AND ASSURANCES REQUIRED-- No State may receive a grant under section 673 unless the Secretary has approved the application and statement of assurances of that State. The Secretary shall not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of this section.

Section 679 specifies how Part H funds may be used by recipients.

USES OF FUNDS

SEC. 679. In addition to using funds provided under section 673 to plan, develop, and implement the statewide system required by section 676, a State may use such funds--

(1) for direct services for handicapped infants and toddlers that are not otherwise provided from other public or private sources, and

(2) to expand and improve on services for handicapped infants and toddlers that are otherwise available.

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PROCEDURAL SAFEGUARDS

SEC. 680. The procedural safeguards required to be included in a statewide system under section 676(b)(12) shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information.

(3) The opportunity for parents and a guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(4) Procedures to protect the rights of the handicapped infant and toddlers whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

(5) Written prior notice to the parents or guardian of the handicapped infant or toddler whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the handicapped infant or toddler.

(6) Procedures designed to assure that the notice required by paragraph (5) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(7) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided or if applying for initial services shall receive the services not in dispute.

Section 680 specifies the procedural safeguards that must be provided.

PAYOR OF LAST RESORT

SEC. 681.

(a) NONSUBSTITUTION.--Funds provided under section 673 may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of this part, except that whenever considered necessary to prevent the delay in the receipt of appropriate early

Section 681 specifies that Part H funds may not be used to pay for services that would have been paid for from another public or private source. States can,

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however, use Part H funds to pay a provider of such services pending reimbursements by the agency responsible.

Finally, section (b) specifies that nothing in Part H can permit the State to reduce medical or other assistance or alter eligibility under maternal and child health (Title V) or Medicaid (Title XIX).

Section 682 establishes the State Interagency Coordinating Council and specifies its composition, rules, authority, functions, responsibilities, and conflict of interest.

intervention services by the infant or toddler or family in a timely fashion, funds provided under section 673 may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

(b) REDUCTION OF OTHER BENEFITS.--Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (relating to maternal and child health) or Title XIX of the Social Security Act (relating to medicaid for handicapped infants and toddlers) within the State.

STATE INTERAGENCY COORDINATING COUNCIL

SEC. 682.

(a) ESTABLISHMENT.--
  (1) Any State which desires to receive financial assistance under section 673 shall establish a State Interagency Coordinating Council composed of 15 members.
  (2) The Council and the chairperson of the Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(b) COMPOSITION.--The Council shall be composed of--
  (1) at least 3 parents of handicapped infants or toddlers or handicapped children aged 3 through 6, inclusive,
  (2) at least 3 public or private providers of early intervention services,
  (3) at least one representative from the State legislature,
  (4) at least one person involved in personnel preparation, and
  (5) other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to handicapped infants and toddlers and their families and others selected by the Governor.

(c) MEETINGS.--The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) MANAGEMENT AUTHORITY.--Subject to the approval of the Governor, the Council may prepare and approve a budget using funds under this part to hire staff, and obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

(e) FUNCTIONS OF COUNCIL.--The Council shall--
  (1) advise and assist the lead agency designated or established under section 676(b)(9) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements.
  (2) advise and assist the lead agency in the preparation of applications and amendments thereto, and
  (3) prepare and submit an annual report to the Governor and the Secretary on the status of early intervention programs for handicapped infants and toddlers and their families operated within the State.

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(f) CONFLICT OF INTEREST.--No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

(g) USE OF EXISTING COUNCILS.--To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with this section. Within 4 years after the date the State accepts funds under section 673, such State shall establish a Council that complies in full with this section.

FEDERAL ADMINISTRATION

SEC. 683. Sections 616, 617, and 620 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that--

(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 676(b)(9),

(2) any reference to the education of handicapped children and the education of all handicapped children and the provision of free public education to all handicapped children shall be deemed to be a reference to the provision of services to handicapped infants and toddlers in accordance with this part, and

(3) any reference to local educational agencies and intermediate educational agencies shall be deemed to be a reference to local service providers under this part.

Section 683 specifies policies governing Federal administration of the Part H program.

ALLOCATION OF FUNDS

SEC. 684.

(a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Paulau, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

(b) (1) The Secretary shall make payments to the Secretary of the Interior according to the need for such assistance for the provision of early intervention services to handicapped infants and toddlers and their families on reservations serviced by the elementary and secondary schools operated for Indians by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for that fiscal year.

(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which meets the requirements of section 678 and which is approved by the Secretary. Section 616 shall apply to any such application.

(c) (1) For each of the fiscal years 1987 through 1991 from the funds remaining after the reservation and payments under subsections (a) and (b), the Secretary shall allot to each State an amount

Section 684 specifies the policies governing the allocation of funds to the States, along with provisions ensuring minimum allocations.

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which bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States, except that no State shall receive less than 0.5 percent of such remainder.

(2) For the purpose of paragraph (1)--

(A) the terms "infants" and "toddlers" mean children from birth to age 2, inclusive, and

(B) the term "State" does not include the jurisdictions described in subsection (a).

(d) If any State elects not to receive its allotment under subsection (c)(1), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

AUTHORIZATION OF APPROPRIATIONS

Section 685 authorizes specific sums to be appropriated to carry out Part H.

SEC. 685. There are authorized to be appropriated to carry out this part $50,000,000 for fiscal year 1987, $75,000,000 for fiscal year 1988, and such sums as may be necessary for each of the 3 succeeding fiscal years.

(b) STUDY OF SERVICES: COORDINATION OF ACTIONS.--

(1) The Secretary of Education and the Secretary of Health and Human Services shall conduct a joint study of Federal funding sources and services for early intervention programs currently available and shall jointly act to facilitate interagency coordination of Federal resources for such programs and to ensure that funding available to handicapped infants, toddlers, children, and youth from Federal programs, other than programs under the Education of the Handicapped Act, is not being withdrawn or reduced.

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary of Education and the Secretary of Health and Human Services shall submit a joint report to the Congress describing the findings of the study conducted under paragraph (1) and describing the joint action taken under that paragraph.

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Part Two

Regulations for Part H

Part Two of this volume contains the final regulations (June 22, 1989) for the Early Intervention Program for Infants and Toddlers with Handicaps, with the inclusion of any published corrections.

It is organized in nine chapters. This chapter provides the introduction and background for the regulations.

Those portions of the June 22 *Federal Register* dealing either with comments about the earlier version of proposed regulations or with a comparison with the prior proposed regulations have been omitted, because their value was limited to a comparison of the two versions and only the final version is now in effect.

The language in this section provides the briefest overview of the program and regulations.

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EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

AGENCY: Department of Education

ACTION: Final regulations

SUMMARY: The Secretary issues final regulations for the program for infants and toddlers with handicaps that was established under the 1986 amendments to the Education of the Handicapped Act (EHA). These regulations are intended to assist States in applying for funds under this authority, and to ensure that an effective early intervention program is established in each participating State.

EFFECTIVE DATE: These regulations take effect either 45 days after PUBLICATION in the FEDERAL REGISTER or later if the Congress takes certain adjournments with the exception of the following sections: § 303.113(b); §§ 303.141 - 303.146; §§ 303.148 - 303.150; § 303.151 (b)(4); § 303.152; §§ 303.160 - 303.175; § 303.301; § 303.341; § 303.344; § 303.403; § 303.420; § 303.510; § 303.520; § 303.540; and § 303.653. These provisions of the regulations will become effective after the information collection requirements contained in the provisions have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 4618 M/S 2313-4600), Washington, D.C. 20202. Telephone: (202) 732-1114.

SUPPLEMENTARY INFORMATION:

A. Background

The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99-457) added a new formula grant program to assist States in establishing a statewide, comprehensive system of early intervention services for infants and toddlers with handicaps and their families. This new program (designated as Part H of the EHA) provides a phase-in period for States to develop the statewide system, including (1) adopting a policy that incorporates all of the components of the statewide system, as part of a State's third year application; (2) having the system in effect no later than the beginning of the fourth year of participation; and (3) providing appropriate early intervention services to all eligible children and their families no later than the beginning of the fifth year. The following is a list of the components of the statewide system and the sections or subparts in which the components are included in these regulations:

(1) State definition of developmental delay (§§ 303.160 and 303.300);

(2) Central directory of information (§§ 303.161 and 303.301);

(3) Timetables for serving all eligible children (§§ 303.162 and 303.302);

(4) Public awareness program (§§ 303.163 and 303.320);

(5) Comprehensive child find system (§§ 303.164 and 303.321);

(6) Evaluation and assessment (§§ 303.165 and 303.322);

(7) Individualized family service plans (§§ 303.166 and 303.340 - 303.346);

(8) Comprehensive system of personnel development (§§ 303.167 and 303.360);

(9) Personnel standards (§§ 303.168 and 303.361);

(10) Procedural safeguards (§§ 303.169 and Subpart E);

(11) Lead agency designation and responsibilities (§§ 303.142, 303.170 - 303.174, and Subpart F);

(12) Policy for contracting or otherwise arranging for services (§§ 303.174 and 303.526);

(13) Procedure for timely reimbursement of funds (§§ 303.172, 303.527 (b), and 303.528); and

(14) Data collection (§§ 303.175 and 303.540).

Each of the fourteen components of a statewide system of early intervention services will be described, annotated, and analyzed in the following chapters.

Part H is the only grant program within the Federal government that focuses exclusively on the provision of services to children with handicaps from birth through age two. However, in enacting Part H, the Congress made clear that the success of the program is dependent upon interagency coordination -- both in providing and paying for appropriate early intervention services. The statute includes a number of requirements that are directed toward ensuring a coordinated approach to the provision and financing of services, including (1) interagency agreements that define the financial responsibility of each agency, (2) a State Interagency Coordinating Council to assist the lead agency in identifying and coordinating financial resources, and (3) nonsubstitution of funds and non-reduction of benefits.

Part H is the only program focusing on services to children with handicaps from birth through age two.

Regarding the need for shared financial responsibility, the Report of the House of Representatives on Pub. L. 99-457 states:

Thus, it is our intent that other funding sources continue; that there is greater coordination among agencies regarding the payment of costs; and that funds under Part H be used only for direct services for handicapped infants and toddlers that are not otherwise provided from other public or private sources... (House Rpt. No. 99-860, 15 (1986).)

The program's dependence on interagency coordination is stressed.

Attention to financial issues is noted.

Part H is designed to build upon existing State systems of early intervention services, and to facilitate development of systems in those States desiring to serve young children with handicaps from birth through age two. The program enables States to use funds under this part to develop a statewide system that fits their own characteristics.

The intent to build on existing State systems of services is noted.

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This and the final paragraph on this page, discuss an earlier Federal effort for State grants. This program had similar purposes and was replaced by the more extensive Part H program.

This paragraph notes the amendment of the Section 619 program for three to five year olds and discusses how those funds could be used related to Part H. (The Section 619 program will not be included in this volume.)

During the initial years of participation under Part H, it is expected that, to the extent appropriate, States will continue, or capitalize on, the planning, development, and implementation efforts that were started under the EHA amendments of 1983 (Pub. L. 98-199). Under those amendments, a State grant provision was added to the Handicapped Children's Early Education Program (Section 623(b) of the EHA) to assist States in establishing a comprehensive delivery system for providing special education and related services to children with handicaps from birth through age five. The 1983 amendments also added a provision that permitted States to use funds under the preschool incentive grant program (Section 619 of the EHA) to serve children birth through two, as well as three through five.

With the enactment of Pub. L. 99-457, (1) the State grant provision under Section 623(b) was eliminated, and Part H was added, and (2) Section 619 was amended to only permit direct services for children three through five. However, under the new Section 619 (Preschool Grants program), States may still use a portion of their annual grant funds (up to 20%) for planning and developing a comprehensive delivery system of services for children from birth through five.

Part H substantially expands the State grant provisions that were initiated under Pub. L. 98-199, but limits the age range of children to be served by the program to children birth through two. Thus, activities under Part H must be directed to infants and toddlers with handicaps -- including activities to prepare for the transition of these children as they reach age three to preschool services under Part B of the EHA or other appropriate services (see § 303.344(h)).

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The regulations are divided into seven subparts (A-H) that contain a total of 128 sections.

The regulations begin with a numerical listing of the subparts, sections, and other headings for quick reference purposes.

A definitions chapter will include all definitions (303.5-24) here, along with those distributed or referred to in the remaining sections.

All of these numerical listings will be repeated in the actual contents of the subparts. The content specific notations will be included at those locations.

The numbering system allows one to quickly determine the subpart location of an individual section:

Subpart A= 303.000-. 24
Subpart B= 303.100-.180
Subpart C= 303.200-.204
Subpart D= 303.300-.361
Subpart E= 303.400-.460
Subpart F= 303.500-.560
Subpart G= 303.600-.670

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PART 303 -- EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

Subpart A -- General

PURPOSE, ELIGIBILITY, AND OTHER GENERAL PROVISIONS

Sec.

303.1 Purpose of the early intervention program for infants and toddlers with handicaps.
303.2 Eligible applicants for an award.
303.3 Activities that may be supported under this part.
303.4 Applicable regulations.

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303.6 Case management.
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303.9 Days.
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303.160 State definition of developmental delay.
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303.164 Comprehensive child find system.
303.165 Evaluation, assessment, and nondiscriminatory procedures.
303.166 Individualized family service plans.
303.167 Comprehensive system of personnel development (CSPD).
303.168 Personnel standards.
303.169 Procedural safeguards.
303.170 Supervision and monitoring of programs.
303.171 Lead agency procedures for resolving complaints.
303.172 Policies and procedures related to financial matters.
303.173 Interagency agreements; resolution of individual disputes.
303.174 Policy for contracting or otherwise arranging for services.
303.175 Data collection.

This is a numerical listing of the seven subparts and the 128 sections.

Content-specific notations will accompany the actual sections.

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Content-specific notations will accompany the actual sections.

Subpart B (continued)-- State Application for a Grant

PARTICIPATION BY THE SECRETARY OF THE INTERIOR

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303.301 Central directory.
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303.526 Policy for contracting or otherwise arranging for services.
303.527 Payor of last resort.
303.528 Reimbursement procedure.

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303.652 Applications.
303.653 Annual report to the Secretary.

EXISTING COUNCILS

303.670 Use of existing councils.

AUTHORITY: 20 USC 1471-1485, unless otherwise noted.

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Subpart A provides general information on the Part H program including extensive definitions along with the purpose and other background information.

303.1 This initial section states the purposes of Part H:

Assisting states to:
1. Develop birth-age 2 early intervention services;
2. Deal with financing issues;
3. Support current state efforts in early intervention.

303.2 This section notes the 58 eligible entities that can receive funds under Part H.

303.3 This section notes the three allowable uses for Part H funds.
1. (a) Developing the statewide early intervention system (**See Analysis** - Statewide System).
2. (b) Funding direct services not otherwise available.
3. (c) Improving existing services (like (b) above); the reference to 303.527 adds timely reimbursement and payor of last resort issues. (**See Analysis** - Financial Issues).

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Subpart A -- General

PURPOSE, ELIGIBILITY, AND OTHER GENERAL PROVISIONS

§ 303.1 Purpose of the early intervention program for infants and toddlers with handicaps.

The purpose of this part is to provide financial assistance to States to --

(a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with handicaps and their families;

(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage): and

(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with handicaps and their families.

(Authority: 20 U.S.C. 1471)

§ 303.2 Eligible applicants for an award.

Eligible applicants include the 50 States, Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands. The future eligibility of the Republic of Palau will be governed by the terms of the Compact of Free Association.

(Authority: 20 U.S.C. 1484)

§ 303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

(a) To plan, develop, and implement a statewide system of early intervention services for children eligible under this part and their families.

(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527.

(Authority: 20 U.S.C. 1473, 1479)

§ 303.4 Applicable regulations.

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including --

(i) Part 76 (State Administered Programs), except for § 76.103;

(ii) Part 77 (Definitions that Apply to Departmental Regulations);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments):

(v) Part 81 (General Education Provisions Act-Enforcement); and

(vi) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)).

(2) The regulations in this Part 303.

(3) The following regulations in 34 CFR Part 300 (Assistance to States for Education of Handicapped Children): §§ 300.560 - 300.576, and §§ 300.581 - 300.586.

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to --

(1) "State educational agency" means the lead agency under this part; and

(2) "Special education," "related services," "free public education," or "education" means "early intervention services" under this part.

(Authority: 20 U.S.C. 1401 - 1418: 1420; 1483)

303.4 This section notes the regulations that apply to Part H.

1. The first set of regulations is EDGAR and five sections are specified (76, 77, 79, 80, 85).
2. The second set are these regulations.
3. The third set are from EHA-B and are included in this document as Chapter 14.

(b) When using the EDGAR or Part B regulations cited above for Part H purposes, Lead Agency is the same as SEA and Education Services is the same as early intervention services.

DEFINITIONS

Note: Sections 303.5 - 303.23 include definitions that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Aggregate amount (§ 303.200(b)(1))

Appropriate professional requirements in the State (§303.361(a)(1))

Assessment (§ 303.322(b)(2))

Consent (§ 303.401(a))

Each definition will be discussed at its actual location in the regulations. In addition, an alphabetical directory section is available as Chapter 17.

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Evaluation (§ 303.322(b)(1))

Frequency and intensity (§ 303.344(d)(2)(i))

From the profession most immediately relevant to the child's or family's needs (§ 303.344(g)(3))

Highest requirements in the State applicable to a profession or discipline (§ 303.361)(a)(2))

Individualized family service plan and IFSP (§ 303.340(b))

Impartial (§ 303.421(b))

Location (§ 303.344(d)(2)(ii))

Method (§ 303.344(d)(2)(iii))

Native language (§ 303.401(b))

Personally identifiable (§ 303.401(c))

Primary referral sources (§ 303.321(d)(3))

Profession or discipline (§ 303.361(a)(3))

Special definition of "infants and toddlers" (§ 303.200(b)(2))

Special definition of "State" (§ 303.200(b)(3))

State approved or recognized certification, licensing, registration, or other comparable requirements (§ 303.361(a)(4))

Statement of assurances (§ 303.120)

303.5 "Act" refers to the Education of the Handicapped Act of which Part H is the eighth part.

303.6 Case management (**See Analysis - Case Management**) receives major discussion in Chapter 16. Acknowledging and regulating the process of case management represents an important departure of Part H. Previously the case management functions were neither labeled as such nor explicitly provided for.

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§ 303.5 Act.

As used in this part, "Act" means the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1401 eta.)

§ 303.6 Case management.

(a) General.

(1) As used in this part, "case management" means the activities carried out by a case manager to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

(2) Each child eligible under this part and the child's family must be provided with one case manager who is responsible for --

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(3) Case management is an active, ongoing process that involves --

(i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(iii) Facilitating the timely delivery of available services; and

(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

Case management is required as a single point of ongoing coordination, facilitating the delivery of services.

(b) Specific case management activities. Case management activities include --

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers: and

(7) Facilitating the development of a transition plan to preschool services, if appropriate.

(b) Seven specific functions of case management listed can be expected by eligible children and their families. This is a broad set of responsibilities.

(c) Employment and assignment of case managers.

(1) Case managers may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that case managers are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(c) The State must design a system that permits case managers to be effective.

(d) Qualifications of case managers. Case managers must be persons who, consistent with § 303.344(g), have demonstrated knowledge and understanding about --

(d) Case managers must have demonstrated knowledge of infants and Part H.

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(1) Infants and toddlers who are eligible under this part;

(2) Part H of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

(Authority: 20 U.S.C. 1472(2))

Note: If States have existing case management systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.

303.7 A simple, non-controversial definition.

§ 303.7 Children.

As used in this part, "children" means "infants and toddlers with handicaps" as that term is defined in § 303.16.

(Authority: 20 U.S.C. 1472(1))

303.8 A simple, non-controversial definition.

§ 303.8 Council.

As used in this part, "Council" means the State Interagency Coordinating Council.

(Authority: 20 U.S.C. 1472(4))

303.9 "Days" is determined conservatively as calendar days, which includes weekends, holidays, etc., in time requirements.

§ 303.9 Days.

As used in this part, "days" means calendar days.

(Authority: 20 U.S.C. 1471-1485)

303.10 It is highly significant that States get to individually define "developmental delay." This gives them significant prerogative in who will be entitled to services. (See Analysis - Entitlement.)

§ 303.10 Developmental delay.

As used in this part, "developmental delay" has the meaning given to that term by a State under § 303.300.

(Authority: 20 U.S.C. 1472(3))

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§ 303.11 Early intervention program.

As used in this part, "early intervention program" means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.

(Authority: 20 U.S.C. 1471 et.)

§ 303.12 Early intervention services.

(a) General. As used in this part, "early intervention services" means services that --

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development:

(2) Are selected in collaboration with the parents;

(3) Are provided --

(i) Under public supervision;

(ii) By "qualified" personnel, as defined in § 303.21, including the types of personnel listed in paragraph (e) of this section.

(iii) In conformity with an individualized family service plan; and

(iv) At no cost, unless, subject to § 303.520(b) (3), Federal or State law provides a system of payments by families, including a schedule of sliding fees; and

(4) Meet the standards of the State, including the requirements of this part.

(b) Location of services. To the extent appropriate, early intervention services must be provided in the types of settings in which infants and toddlers without handicaps would participate.

(c) General role of service providers. To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for --

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

(d) Types of services; definitions. Following are types of services included under "early intervention services," and, if appropriate,

303.11 An interesting definition. The "early intervention program" means the entire statewide system rather than an individual service provider.

303.12 An extensive section defining services and service providers. It is unprecedented in detail and illustrates the interests of many disciplines.
(1) Early Intervention Services must meet both the developmental needs of the child and family needs related to enhancing the child's development.
(3)(i) Services must be provided under public supervision.

(3)(ii) Qualified Personnel (**See Analysis** - Personnel Standards).
(3)(iv)Requires the State to pass a law if fees are to be allowed.
(4)Services must meet the standards of the State.

(b)These three lines add the concept of Least Restrictive Environment to Part H (**See Analysis** - Least Restrictive Environment).

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definitions of those services:

(1) Defines audiology services.

(1) "Audiology" includes --

(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(2) Services in addition to those specified under case management in 303.6 are also included as early intervention services.

(2) "Case management services" means assistance and services provided by a case manager to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.6.

(3) "Family training, counseling, and home visits" means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) "Health services" are defined in 303.13.

(4) "Health services" (See § 303.13).

(5) "Medical services" are limited to diagnosis and evaluation only.

(5) "Medical services only for diagnostic or evaluation purposes" means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) Early intervention "nursing services" are defined here.

(6) "Nursing services" includes --

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

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(7) "Nutrition services" includes --

(i) Conducting individual assessments in --

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(7) "Nutrition services" are defined here.

(8) "Occupational therapy" includes services to address the functional needs of a child related to the performance of self-help skills, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include --

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(8) "Occupational therapy" services are defined here.

(9) "Physical therapy" includes --

(i) Screening of infants and toddlers to identify movement dysfunction;

(ii) Obtaining, interpreting, and integrating information appropriate to program planning, to prevent or alleviate movement dysfunction and related functional problems; and

(iii) Providing services to prevent or alleviate movement dysfunction and related functional problems.

(9) "Physical therapy" services are defined.

(10) "Psychological services" includes

(i) Administering psychological and developmental tests, and other assessment procedures;

(ii) Interpreting assessment results;

(10) "Psychological services" are defined.

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(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) "Social work services" are defined.

(11) "Social work services" includes --

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a psychosocial developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skillbuilding activities with the child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(12) "Special instruction" is defined.

(12) "Special instruction" includes --

(i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction:

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the child to enhance the child's development.

(13) "Speech-language pathology" is defined.

(13) "Speech-language pathology" includes --

(i) Identification of children with communicative or oral pharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with

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communicative or oral pharyngeal disorders and delays in development of communication skills; and rehabilitation, or prevention of communicative or oral pharyngeal disorders and delays in development of communication skills.

(14) "Transportation" (see § 303.23).

(c) Qualified personnel. Early intervention services must be provided by qualified personnel, including --

(1) Audiologists;

(2) Nurses;

(3) Nutritionists;

(4) Occupational therapists;

(5) Physical therapists;

(6) Physicians;

(7) Psychologists;

(8) Social workers;

(9) Special educators; and

(10) Speech and language pathologists.

(Authority: 20 U.S.C. 1472(2))

Note 1: With respect to the requirement in paragraph (b) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting -- during the period in which they require extensive medical intervention. However, for these and other eligible children, it is important that efforts be made to provide early intervention services in settings and facilities that do not remove the children from natural environments (e.g., the home, day care centers, or other community settings). Thus, it is recommended that services be community-based, and not isolate an eligible child or the child's family from settings or activities in which children without handicaps would participate.

Note 2: The list of services in paragraph (d) of this section is not exhaustive and may include other types of services, such as vision services, and the provision of respite and other family support services. There also are other types of personnel who may provide services under this part, including vision specialists, paraprofessionals, and parent-to-parent support personnel.

§ 303.13 Health services.

(a) As used in this part, "health services" means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(14) "Transportation" is defined in § 303.23.

(e) Early intervention services must be provided by qualified personnel (**See Analysis - Personnel Standards**). Ten disciplines are specifically noted but others are not excluded.

Notes are designed to provide clarification or guidance to readers, but they are not regulatory. Note 1 clarifies the location of service (least restrictive environment) intent of paragraph (b) to be community based, integrated settings.

Note 2 indicates that there may be other types of early intervention services beyond those listed above.

303.13 Health services are restricted to those that enable child to benefit from early intervention services during the delivery of those services. Specific examples of such services are given in (b).

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(b) The term includes --

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or osteotomy collection bags, and other health services; and

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(c) Several items are specifically excluded from health services.

(c) The term does not include the following:

(1) Services that are --

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical condition.

(3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1472(2))

The definition of "health services" is fairly restrictive in nature. It clearly reflects the case law regarding *Amber Tatro*.

An important Note. Other medical-health services should be listed on the IFSP, but such a listing does not impose an obligation to provide the services unless they meet the definition of health services.

Note: The definition in this section distinguishes between the health services that are required under this part; and the medical-health services that are not required. The IFSP requirements in Subpart D provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See § 303.344(e), and note 2.)

§ 303.14 IFSP.

303.14 IFSP will be discussed at 303.340.

As used in this part, "IFSP" means the individualized family service plan, as that term is defined in § 303.340(b).

(Authority: 20 U.S.C. 1477)

§ 303.15 Include; including.

303.15 Indicates that listings with the term "include" should not be considered all-inclusive.

As used in this part, "include" or "including" means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(Authority: 20 U.S.C. 1483)

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§ 303.16 Infants and toddlers with handicaps.

(a) As used in this part, "infants and toddlers with handicaps" means individuals from birth through age two who need early intervention services because they --

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

(i) Cognitive development;

(ii) Physical development, including vision and hearing;

(iii) Language and speech development;

(iv) Psychosocial development; or

(v) Self-help skills; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth though age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1472(1))

Note 1: As used in paragraph (a)(2) of this section, "high probability" is not intended to be viewed as a statistical term. Rather, the phrase "have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay" applies to conditions with known etiologies and developmental consequences. Examples of these conditions include Down Syndrome and other chromosomal abnormalities, sensory impairments, including vision and hearing, inborn errors of metabolism, microcephaly, severe attachment disorders, including failure to thrive, seizure disorders, and fetal alcohol syndrome.

Note 2: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as handicapped.

Under this provision, States have the authority to define who would be "at risk of having substantial developmental delays if early intervention services are not provided." In defining the "at risk" population, States may include well-known biological and other factors that can be identified during the neonatal period, and that place infants "at risk" for developmental delay. Commonly cited factors relating to infants include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, and infection. It should be noted that these factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without those problems.

"Infants and toddlers with handicaps" is defined here. There are two ways to establish eligibility.

(1) is based on documented developmental delays in the five listed areas. Remember that 303.10 allows the State to define such developmental delays.

(2) is based on diagnosed physical or mental condition with a high probability of result in developmental delay. High probability is clarified in Note 1 below.

(b) allows the States to include children who are "at risk" as eligible for early intervention services (See Analysis- Entitlement).

Note 2 clarifies that extending services to the "at risk" population is elective on the part of the State and provides a very broad interpretation of what "at risk" could include.

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303.17 This appears to be a liberal definition of "multidisciplinary" requiring only two or more unnamed disciplines or professions.

§ 303.17 Multidisciplinary.

As used in this part, "multidisciplinary" means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322, and development of the IFSP in § 303.342.

(Authority: 20 U.S.C. 1476(b)(3); 1477(a))

303.18 Consistent with the definition of "parent" for the education of the handicapped, this is again a very liberal definition except for the exclusion of the State as parent.

§ 303.18 Parent.

As used in this part, "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 303.405. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1477)

Note: The term "parent" has been defined to include persons acting in the place of a parent, such as a grandparent or step-parent with whom a child lives, as well as persons who are legally responsible for the child's welfare. The definition in this section is identical to the definition used in the Part B regulations (34 CFR 300.10).

303.19 Policies are broadly defined to include statutes, regulations, orders, directives, or other written documents.

(b) This notes the areas in which States must develop policies.

§303.19 Policies.

(a) As used in this part, "policies" means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.

(b) State policies include --

(1) A State's commitment to develop and implement the statewide system (see § 303.148);

(2) A State's definition of "developmental delay" (see § 303.300);

(3) A State's position regarding the provision of services to children who are at risk;

(4) A statement that --

(i) Provides that, subject to § 303.520(b)(3), services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law; and

(ii) Sets out what fees (if any) will be charged for early intervention services, and the basis for those fees;

(5) A State's standards for personnel who provide services to children eligible under this part (see § 303.361);

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(6) A State's position and procedures related to contracting or making other arrangements with service providers under Subpart F; and

(7) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(Authority: 20 U.S.C. 1471-1485)

§ 303.20 Public agency.

As used in this part, "public agency" includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(Authority: 20 U.S.C. 1471 - 1485)

303.20 Defines "public agency" to include the lead agency and any other political subdivisions.

§ 303.21 Qualified.

As used in this part, "qualified" means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(Authority: 20 U.S.C. 1472(2))

303.21 "Qualified" is a critical definition. It notes that persons providing early intervention must have met state certification, licensing, registration, etc. (See **Analysis** - Personnel Standards).

Note: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

1. Section 303.12(a) (4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under Part B of the Act (i.e., that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services).

2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.

3. Section 303.361 requires States to establish policies and procedures related to personnel standards.

The note cross references three other sections in relationship to the definition of "qualified" that are discussed at their respective locations.

§ 303.22 State.

Except as provided in 303.200(b)(3), "State" means each of the 50 States, Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(a)(6))

303.22 A simple, non-controversial definition of "State" that includes seven other organization units as States.

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303.23 This defines "transportation" as all related costs of travel for the child and the child's family necessary to receive early intervention services.

§ 303.23 Transportation.

As used in this part, "transportation" includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and related costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(Authority: 20 U.S.C. 1472(2))

§ 303.24 EDGAR definitions that apply.

Each of these definitions from EDGAR is included alphabetically in Chapter 17.

The following terms used in this part are defined in 34 CFR 77.1:

Applicant

Award

Contract

Department

EDGAR

Fiscal year

Grant

Grantee

Grant period

Private

Public

Secretary

(Authority: 20 U.S.C. 1471 *et. seq.*)

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Subpart B deals with the requirements each State must meet in its application in order to participate in the Part H program.

As such, it is of primary importance to the lead agency developing the Part H program in the States and territories.

States make annual applications for funding that vary as new expectations of the program become effective.

Subpart B - State Application for a Grant

GENERAL REQUIREMENTS

§ 303.100 Conditions of assistance.

(a) In order to receive funds under this part for any fiscal year, a State shall --

(1) Have an approved application that contains the information required in this subpart for the year in which the State is applying; and

(2) Have on file with the Secretary the statement of assurances required under § 303.120 - 303.127.

(b) For years one through five, a State must submit an annual application. Thereafter, a State may submit a three-year application.

(Authority: 20 U.S.C. 1478)

§ 303.101 How the Secretary disapproves a State's application or statement of assurances.

The Secretary follows the procedures in 34 CFR 300.580 - 300.586 before disapproving a State's application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1478)

PUBLIC PARTICIPATION

The State's annual application must be widely available for public comment before submission. The results of the comments must be summarized in the final application.

§ 303.110 General requirements and timelines for public participation.

(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall --

(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;

(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and

(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.

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(b) A State may request an exemption from the timelines in paragraph (a) of this section if the State can demonstrate that --

(1) There are circumstances that would warrant such an exception; and

(2) The timelines that were followed provided an adequate opportunity for public participation and comment.

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.111 Notice of public hearings and opportunity to comment.

303.111 This specifies how the State must provide notice on the proposed application.

The notice required in § 303.110(a)(3) must --

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about --

(1) The purpose and scope of the State application or policy, and its relationship to Part H of the Act;

(2) The length of the comment period, and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1478(a)(4)(A))

§ 303.112 Public hearings.

303.112 This requires a sufficient number of hearings (more than one) appropriately located to provide reasonable opportunity to provide input.

Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.113 Reviewing and reporting on public comments received.

303.113 This indicates that all comments must be considered and reported, and the State's response indicated, in the final application.

(a) Review of comments. Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency shall --

(1) Review and consider all public comments; and

(2) Make any modifications it deems necessary in the application or policy.

(b) Reporting on comments to the Secretary. In submitting the State's

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application or policy to the Secretary, the lead agency shall include --

(1) A summary of the public comments received as a result of the activities required in §§ 303.110 - 303.112;

(2) The State's responses to those comments; and

(3) Copies of news releases, advertisements, and announcements used to provide notice.

(Authority: 20 U.S.C. 1478(a))

STATEMENT OF ASSURANCES

303.120 Key to the continued State participation are assurances from the State as required in the following seven sections.

§ 303.120 General.

(a) A State's statement of assurances must contain the information required in §§ 303.121 - 303.127.

(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part.

(c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 - 303.127.

(Authority: 20 U.S.C. 1478(b))

303.121 The State must provide reports as required.

§ 303.121 Reports and records.

The statement must provide for --

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping such records and affording such access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Authority: 20 U.S.C. 1478(b)(4))

303.122 The State must administer the funds and retain title to property acquired for the purpose of Part H.

§ 303.122 Control of funds and property.

The statement must provide assurance satisfactory to the Secretary that --

(a) The control of funds provided under this part, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part; and

(b) A public agency will administer the funds and property.

(Authority: 20 U.S.C. 1478(b)(3))

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§ 303.123 Prohibition against commingling.

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(Authority: 20 U.S.C. 1478(b)(5)(A)

Note: As used in this part, "commingle" means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified -- with a clear audit trail for each source -- it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.
Thus, the assurance in this section is satisfied by the use of an accounting system that includes an "audit trail" of the expenditure of funds awarded under this part. Separate bank accounts are not required.

303.123 States must keep Part H funds separate from other State funds so that a thorough accounting can be made of expenditures under this part.

§ 303.124 Prohibition against supplanting.

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section --

(1) The total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for --

(i) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(ii) Unusually large amounts of funds expended for such longterm purposes as the acquisition of equipment and the construction of facilities; and

(2) Funds under this part must not be used to displace State or local funds for any particular cost.

(Authority: 20 U.S.C. 1478(b)(5)(B))

Note: The nonsupplanting requirement in this section prohibits a State from supplanting State and local funds on either an aggregate basis or for a given expenditure. Thus, under Part H, whether supplanting has

303.124 The State must assure that the Part H funds only supplement and increase State and local funds for eligible children rather than supplant (take the place of) existing funds.

(b)(1) This indicates measurement and adjustments for determining if supplanting is taking place. (See **Analysis**- Financial Issues.)

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occurred is evaluated on the basis of two tests, as follows:

(1) First, whether State and local expenditures budgeted for the current fiscal year for early intervention services are at least equal to expenditures from the most recent fiscal year for which they are available. (This means that if a State spent $1,000,000 for early intervention services in FY-1, the State must budget at least $1,000,000 in FY-2, unless one of the conditions in paragraph (b)(1) of this section applies.).

(2) Second, whether Part H funds are used to pay for a particular activity that was previously supported with State or local funds. Thus, if a hospital-based project was supported entirely by State and local funds in FY-1, Part H funds could not be used to support that project in FY-2. However, to the extent that new services are added to the hospital project in FY-2, those new services could be paid for with Part H funds.

Example (2) from the note discusses the use of Part H funds in a program previously supported by State and local funds. Only new services can be supported.

303.125 This requires an assurance of proper accounting procedures.

§ 303.125 Fiscal control.

The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.

(Authority: 20 U.S.C. 1478(b)(6))

303.126 This assures compliance with payor-of-last-resort requirements (**See Analysis** - Financial Issues).

§ 303.126 Payor of last resort.

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on --

(a) Nonsubstitution of funds; and

(b) Non-reduction of other benefits.

(Authority: 20 U.S.C. 1478(b)(2))

303.127 This assures that Part H funds will only be expended according to Part H provisions and approved uses.

§ 303.127 Assurance regarding expenditure of funds.

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.

(Authority: 20 U.S.C. 1478(b)(1))

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GENERAL REQUIREMENTS FOR A STATE APPLICATION

This section specifies the contents of the State's application for participation in Part H.

§ 303.140 General.

A State's application under this part must contain the information required in §§ 303.141 - 303.146.

(Authority: 20 U.S.C. 1478(a))

§ 303.141 Information about the Council.

303.141 Information must be provided on the Interagency Coordinating Council (ICC).

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of Subpart G.

(Authority: 20 U.S.C. 1478(a)(2))

§ 303.142 Designation of lead agency.

303.142 The application must designate a lead agency responsible for the administration of Part H funds.

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(Authority: 20 U.S.C. 1478(a)(1))

§ 303.143 Assurance regarding use of funds.

303.143 This assures appropriate use of funds.

Each application must include an assurance that funds received under this part will be used to assist the State to plan, develop, and implement the statewide system required under Subparts D through F.

(Authority: 20 U.S.C. 1475, 1478(a)(2), (3))

§ 303.144 Description of use of funds.

303.144 This requires a separate description of how funds will be used by the lead agency and the ICC, including:

(a) General. Each application must include a description of how a State proposes to use its funds under this part for the fiscal year covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (d) of this section.

(b) Administrative positions. Each application must include --

Funding of administrative positions, and

(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

Funding and description of each major planning, development and implementation activity.

(c) Planning, development, and implementation activities. Each application must include --

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(1) A description of the nature and scope of each major activity to be carried out under this part in planning, developing, and implementing the statewide system of early intervention services; and

(2) The approximate amount of funds to be spent for each activity.

A description and funding information for any direct services provided with Part H funds.

(d) Direct services.

(1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, consistent with §§ 303.521 and 303.527.

(2) The description must include information about each type of service to be provided, including --

(i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and

(ii) The approximate amount of funds under this part to be used for the service.

Part H funded activities of other agencies of government.

(e) Activities by other agencies. If other agencies are to receive funds under this part, the application must include --

(1) The name of each agency expected to receive funds;

(2) The approximate amount of funds each agency will receive; and

(3) A summary of the purposes for which the funds will be used.

(Authority: 20 U.S.C. 1478(a)(3), (a)(5))

303.145 This requires the inclusion of information about public participation in the application.

§ 303.145 Information about public participation.

Each application must include the information on public participation that is required in § 303.113(b).

(Authority: 20 U.S.C. 1478(a)(4))

303.146 This requires an assurance that funds will be distributed equitably (**See Analysis** - Financial Issues).

§ 303.146 Equitable distribution of resources.

(a) Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(b) In determining equitable distribution of resources, a State must take into account the need for services across all geographical areas within the State.

(Authority: 20 U.S.C. 1478(a)(6))

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SPECIFIC APPLICATION REQUIREMENTS FOR YEARS ONE THROUGH FIVE AND THEREAFTER

This section provides additional requirements for State participation after the first two years.

§ 303.147 Application requirements for first and second years.

A State's annual application for the first and second years of participation under this part must contain the information required in §§ 303.141 - 303.146.

(Authority: 20 U.S.C. 1475; 1478(a))

§ 303.148 Third year applications.

303.148 Third year application requires an assurance or a request for a waiver on the adoption of policy providing the statewide system.

"Policy" was defined in 303.19 of the previous chapter.

(a) General. A State's third year application under this part must contain the following:

(1) The information required in §§ 303.141 - 303.146.

(2) Either --

(i) The information and assurances regarding the statewide system of early intervention services, as required in paragraph (b) of this section; or

(ii) If the State is eligible for a waiver, a request for a waiver, in accordance with the requirements in § 303.149.

(3) Other information that the Secretary may require.

(b) Adoption of policy on statewide system. Each third year application must include information and assurances demonstrating to the satisfaction of the Secretary that --

(b) The third year application must assure that it is the policy of the State to develop and implement all components of the statewide system with the exception of the implementation of IFSP by the beginning of the fourth year of participation, unless a waiver is requested.

(1) It is the policy of the State to develop and implement a statewide, comprehensive, coordinated, interagency, multidisciplinary system for providing early intervention services to all children eligible under this part and their families;

(2) The policy in paragraph (b)(1) of this section incorporates all of the components of the statewide system of early intervention services that are required under this part; and

(3) Subject to § 303.341(a), the statewide system will be in effect no later than the beginning of the State's fourth year of participation under this part.

(Authority: 20 U.S.C. 1475(b); 1478(a))

§ 303.149 Waiver of the policy adoption requirement for the third year.

303.149 State may receive third year funding without a policy of

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in § 303.148(b),

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implementation if they can demonstrate good faith efforts to achieve such a policy indicating why timelines were not met and what steps remain.

if the State, in its third year application, includes a statement requesting a waiver, including --

(a) Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in § 303.148(b)(1) and (b)(2);

(b) The reasons why the State was unable to meet the timeline for policy adoption, and the steps remaining before the policy will be adopted; and

(c) An assurance that, except as provided in 303.341(a), the policy required in § 303.148(b)(1) and (b)(2) will be adopted and go into effect no later than the beginning of the State's fourth year of participation under this part.

(Authority: 20 U.S.C. 1475(b)(2))

(c) The waiver request still requires an assurance that the policy will be adopted by the beginning of the fourth year of participation (See Analysis - Waiver).

Note: An example of when the Secretary may grant a waiver is a situation in which a State's policy is awaiting action by the State legislature, but the legislative session does not commence until after the State's application must be submitted.

303.150 Fourth year application requires an assurance that the statewide system of early intervention services will be in effect by the beginning of the fourth year (without implementing IFSPs). It must also contain information and assurances about each component of the statewide system to be examined in 303.160 through 303.175.

§ 303.150 Fourth year applications.

A State's application for the fourth year of participation under this part must contain --

(a) The information required in §§ 303.141 - 303.146;

(b) Information and assurances to demonstrate that --

(1) The requirements in § 303.148(b)(1) and (b)(2) are met; and

(2) Subject to § 303.341(a), the statewide system of early intervention services is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part;

(c) Information and assurances about each component of the statewide system, as required in §§ 303.160 - 303.175; and

(d) Other information that the secretary may require.

(Authority: 20 U.S.C. 1475(b), 1478(a))

303.151 States requiring services for children with handicaps from birth through age two can participate in Part H through the fourth year if:

§ 303.151 States with mandates as of September 1, 1986 to serve children with handicaps from birth.

(a) Subject to the requirements in paragraph (b) of this section, a State that has in effect a State law, enacted before September 1, 1986, that requires the provision of a free appropriate public education to children with handicaps from birth through two is eligible for a grant under this part for the first through the fourth year of its participation.

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(b) A State meeting the conditions in paragraph (a) of this section must --

(1) Have on file with the Secretary a statement of assurances containing the information required in §§ 303.121 - 303.127;

(2) Submit an annual application for years one through four that contains the information in §§ 303.141 - 303.146;

(3) Meet the public participation requirements in §§ 303.110 -303.113; and

(4) Provide a copy of the State law that requires the provision of a free appropriate public education to children with handicaps from birth through age two.

(c) In order to receive funds under this part for the fifth and succeeding years, the State must submit an application that meets the requirements in § 303.52.

(Authority: 20 U.S.C. 1475(d))

they provide a copy of their law requiring such services.

§ 303.152 Applications for year five and each year thereafter.

(a) Fifth year application. A State's application for the fifth year of its participation under this part must contain --

(1) The information required in §§ 303.141 - 303.146, and 303.160 - 303.175;

(2) Information and assurances demonstrating to the satisfaction of the Secretary that the statewide system of early intervention services required in this part is in effect;

(3) A policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available to all children in the State who are eligible under this part and their families;

(4) A description of the services to be provided no later than the beginning of the fifth year, in accordance with the timetables under § 303.302; and

(5) Other information that the Secretary may require.

(b) Applications for succeeding years. A State's applications for the succeeding years of participation under this program must contain information and assurances demonstrating to the satisfaction of the Secretary that the State will continue to meet all applicable conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1475(c); 1478(a); 1476(b)(2))

303.152 Applications for the fifth year of participation and thereafter must continue to provide all assurances previously discussed. All components of the statewide system of early intervention must be provided along with the other general assurances.

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This section delineates that the State's application must contain information and assurance regarding sixteen components of the statewide system.

Each of these sixteen sections (303.160 to 303.175) has content-related references to section(s) in later subparts. Content-related annotations will be in the later subparts (Chapters 10 - 12).

303.160 This requires the State's definition of "developmental delay."

303.161 This requires that an appropriate central directory has been developed.

303.162 This requires the State to specify timelines for program implementation.

303.163 This requires information on the public awareness program.

303.164 This requires the child find system and referral procedures.

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APPLICATION REQUIREMENTS FOR YEARS FOUR, FIVE, AND THEREAFTER RELATED TO COMPONENTS OF A STATEWIDE SYSTEM

§ 303.160 State definition of developmental delay.

Each application must include the State's definition of "developmental delay." The definition must include the information required in § 303.300.

(Authority: 20 U.S.C. 1476(b)(1))

§ 303.161 Central directory.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in § 303.301.

(Authority: 20 U.S.C. 1476(b)(7))

§ 303.162 Timetables for serving all eligible children.

Each application must include an assurance that the timetables required in § 303.302 have been established and will be met.

(Authority: 20 U.S.C. 1476(b)(2))

§ 303.163 Public awareness program.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in § 303.320.

(Authority: 20 U.S.C. 1476(b) 6))

§ 303.164 Comprehensive child find system.

Each application must include --

(a) The policies and procedures required in § 303.321(b):

(b) Information demonstrating that the requirements on coordination in § 303.321(c) are met;

(c) The referral procedures required in § 303.321(d), and either --

(1) A description of how the referral sources are informed about the procedures; or

(2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and

(d) The timelines in § 303.321(e).

(Authority: 20 U.S.C. 1476(b)(5))

§ 303.165 Evaluation, assessment, and nondiscrimination procedures.

Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.

(Authority: 20 U.S.C. 1476(b)(3), 1477(a)(1), (d)(2), (d)(3))

§ 303.166 Individualized family service plans.

Each application must include --

(a) An assurance that the IFSP requirements in § 303.341 will be met; and

(b) Information demonstrating that --

(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343 and 303.345; and

(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(Authority: 20 U.S.C. 1476(b)(4); 1477(d))

§ 303.167 Comprehensive system of personnel development (CSPD).

Each application must include the following:

(a) Information to show that the requirements in § 303.360(a) are met. A State meets this requirement by either --

(1) Incorporating the State's CSPD procedures under part B of the Act (34 CFR 300.380 - .387); or

(2) Including procedures that the State has developed.

(b) An assurance that the State's personnel development system will meet the requirements in § 303.360(b).

(Authority 20 U.S.C. 1476(b)(8))

§ 303.168 Personnel standards.

(a) Each application must include policies and procedures that are consistent with the requirements in § 303.361.

(Authority 20 U.S.C. 1476(b)(13))

Each of these sixteen sections (303.160 to 303.175) has content-related references to section(s) in later subparts. Content-related annotations will be in the later subparts (Chapters 10 - 12).

303.165 This requires assurances regarding evaluation, assessment, and nondiscrimination procedures.

303.166 This requires assurances regarding IFSPs.

303.167 This requires information on the State's comprehensive system of personnel development (CSPD)(**See Analysis** - Personnel Development).

303.168 This requires information on personnel standards. (**See Analysis** - Personnel Standards).

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Each of these sixteen sections (303.160 to 303.175) has content-related references to section(s) in later subparts. Content-related annotations will be in the later subparts (Chapters 10 - 12).

303.169 This requires assurances on procedural safeguards (**See Analysis** - Procedural Safeguards).

303.170 This requires information to demonstrate that the State meets requirements for supervision and monitoring.

303.171 This requires information on lead agency complaint resolution procedures (**See Analysis** - Procedural Safeguards).

303.172 This requires information on policies and procedures related to financial matters.

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§ 303.169 Procedural safeguards.

Each application must include procedural safeguards that --

(a) Are consistent with §§ 303.400 - 303.405, 303.420 - 303.425, and 303.460; and

(b) Incorporate either --

(1) The due process procedures in 34 CFR 300.506 - 300.512; or

(2) The procedures that the State has developed to meet the requirements in §§ 303.420(b) and 303.421 - 303.425.

(Authority: 20 U.S.C. 1476(b)(12))

§ 303.170 Supervision and monitoring of programs.

Each application must include information to show that the requirements in § 303.501 are met.

(Authority: 20. U.S.C. 1476(b)(9)(A))

§ 303.171 Lead agency procedures for resolving complaints.

Each application must include procedures that are consistent with the requirements in §§ 303.510 - 303.512.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.172 Policies and procedures related to financial matters.

Each application must include --

(a) Funding policies that meet the requirements in §§ 303.520 and 303.521;

(b) Information about funding sources, as required in 303.522;

(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and

(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Authority: 20 U.S.C. 1476(b)(9)(D); (E); (b)(11); 1481)

§ 303.173 Interagency agreements; resolution of individual disputes.

Each application must include --

(a) A copy of each interagency agreement that has been developed under § 303.523; and

(b) Information to show that the requirements in § 303.524 are met.

(Authority: 20 U.S.C. 1476(b)(9)(E))

§ 303.174 Policy for contracting or otherwise arranging for services.

Each application must include a policy that meets the requirements in § 303.526.

(Authority: 20 U.S.C. 1476(b)(10))

§ 303.175 Data collection.

Each application must include procedures that meet the requirements in § 303.540.

(Authority: 20 U.S.C. 1476(b)(14))

PARTICIPATION BY THE SECRETARY OF THE INTERIOR

§ 303.180 Eligibility of the Secretary of the Interior for assistance.

(a) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for assistance for the provision of early intervention services to children with handicaps and their families on reservations served by the elementary and secondary schools operated for Indians by the Department of the Interior.

(b) The Secretary of the Interior may receive an award under this part only after submitting an application that --

(1) Meets the conditions of assistance required by § 303.100; and

(2) Is approved by the Secretary.

(Authority: 20 U.S.C. 1484(b))

Each of these sixteen sections (303.160 to 303.175) has content-related references to section(s) in later subparts. Content-related annotations will be in the later subparts (Chapters 10 - 12).

303.173 This requires information on interagency agreements (**See Analysis** - Interagency Agreements) and resolution of individual disputes (**See Analysis** - Procedural Safeguards).

303.174 This requires the State's policy on contracting for services.

303.175 This requires information about procedures for collecting data on the statewide system.

303.180 This relates only to the Secretary of the Interior, one of the 58 eligible applicants for Part H participation, for Department of Interior schools operated for Indians.

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Subpart C deals with the technical procedures for making grants to States and other eligible applicants in the Part H program.

Subpart C - Procedures for Making Grants to States

§ 303.200 Formula for State allocations.

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section --

(1) "Aggregate amount" means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204;

(2) "Infants and toddlers" means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and

(3) "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1484(c)(1))

303.200 This section indicates how funding is distributed to States. In general, available funds are divided based on the number of infants and toddlers in the State in ratio to the number of infants and toddlers in all States. This also includes the District of Columbia and Puerto Rico.

§ 303.201 Distribution of allotments from non-participating States.

If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with 303.200(a).

(Authority: 20 U.S.C. 1484(d))

303.201 Funds allocated for non-participating States will be reallocated to the participating States.

§ 303.202 Minimum grant that a State may receive.

No State receives less than 0.5 percent of the aggregate amount available under § 303.200.

(Authority: 20 U.S.C. 1484(d))

303.202 This indicates that States with small numbers of infants and toddlers will receive 0.5 percent of available funds; these are considered minimum allotment States.

§ 303.203 Payments to the Secretary of the Interior.

Subject to § 303.180(a), the amount of the payment to the Secretary of the Interior for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.

(Authority: 20 U.S.C. 1484(b))

303.203 The amount of payment to the Secretary of the Interior will be 1.25 percent of available funds.

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§ 303.204 Payments to the jurisdictions.

From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.200 in accordance with their respective needs.

(Authority: 20 U.S.C. 1484(a))

303.204 This section indicates that one percent of the available funds may be allocated to States based on needs.

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Subpart D describes the program and service components of the statewide system of early intervention services (**See Analysis - Statewide System**). This section provides the major substantive information for the Part H program.

303.300 This details the requirements for the State's definition of "developmental delay" (**See Analysis - Developmental Delay**). States must designate the criteria to be used to determine eligibility for the five developmental areas specified in (a).

The note references a requirement in evaluation and assessment requiring the use of informed clinical opinion in determining eligibility.

303.301 This specifies the contents and requirements for the central directory of information.

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Subpart D -- Program and Service Components of a Statewide System of Early Intervention Services

GENERAL

§ 303.300 State definition of developmental delay.

Each statewide system of early intervention services (system) must include the definition of "developmental delay" that will be used by the State in carrying out programs under this part. The State's definition must --

(a) Specify that a child may be determined to be eligible if the child has a delay, in accordance with paragraphs (b) and (c) of this section, in one or more of the following developmental areas: cognitive development; physical development, including vision and hearing; language and speech development; psychosocial development; or self-help skills;

(b) Designate the levels of functioning, or other criteria, that will be used in determining a child's eligibility as a result of developmental delay; and

(c) Describe the procedures the State will use to determine the existence of a developmental delay in each developmental area included in paragraph (a) of this section.

(Authority: 20 U.S.C. 1472(1), 1476(b)(1))

Note: Under 303.322(c)(2), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

§ 303.301 Central directory.

(a) Each system must include a central directory of information about --

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and dèmonstration projects being conducted in the State; and

(3) professional and other groups that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to --

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be --

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available --

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons who are handicapped.

(Authority: 20 U.S.C. 1476(b)(7))

Note: Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.

This directory must be updated annually and be accessible to individuals throughout the State.

The note clarifies that appropriate listings of groups in the directory should include parent support groups and advocacy organizations.

§ 303.302 Timetables for serving all eligible children.

Each system must include timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with handicaps no later than the beginning of the fifth year of the State's participation under this part.

(Authority: 20 U.S.C. 1476(b)(2))

303.302 This requires the State to include timetables for initiating services by the beginning of the fifth year of the program. (See Analysis - Timetables).

IDENTIFICATION AND EVALUATION

§ 303.320 Public awareness program.

Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part. The public awareness program must provide for informing the public about --

(a) The State's early intervention program;

(b) The child find system, including --

(1) The purpose and scope of the system;

(2) How to make referrals; and

(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

303.320 This requires that a public awareness program must inform the public about the child find system, how to make referrals, and how to access evaluations and the central directory.

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These non-regulatory notes indicate that an "effective" program is broad, ongoing, responsive to rural areas, involves organizations and groups throughout the state, and uses a variety of methods to inform the public.

(c) The central directory.

(Authority: 20 U.S.C. 1476(b)(6))

Note 1: An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;
2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;
3. Has coverage broad enough to reach the general public, including those who are handicapped; and
4. Includes a variety of methods for informing the public about the provisions of this part.

Note 2: Examples of methods for informing the general public about the provisions of this part include: (1) use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctor's offices, hospitals, and other appropriate locations, and (3) the use of a toll-free telephone service.

303.321 This specifies the requirements for the child find system, which is the responsibility of the lead agency.

§ 303.321 Comprehensive child find system.

(a) General.

(1) Each system must include a comprehensive child find system that is consistent with Part B of the Act (see 34 CF 300.128), and meets the requirements in paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) The procedures should reach all eligible children and determine their need for early intervention services.

(b) Procedures.

The child find system must include the policies and procedures that the State will follow to ensure that --

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and determine which children are receiving needed early intervention services, and which children are not receiving those services.

(c) The child find system will be coordinated with other major State agency efforts to find children, including coordination with

(c) Coordination.

(1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various edu-

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cation, health, and social service programs relevant to this part, including efforts in the --

(i) Assistance to States Program under Part B of the Act;

(ii) Maternal and Child Health program under Title V of the Social Security Act;

(iii) Medicaid's Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under Title XIX of the Social Security Act;

(iv) Developmental Disabilities Assistance and Bill of Rights Act; and

(v) Head Start Act.

(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that --

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) Referral procedures.

(1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for --

(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.

(2) The procedures required in paragraph (b)(1) of this section must --

(i) provide for an effective method of making referrals by primary referral sources; and

(ii) Ensure that referrals are made no more than two working days after a child has been identified.

(3) As used in paragraph (d)(1) of this section, "primary referral sources" includes --

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

the five major programs and efforts listed to the left.

(2) The lead agency shall ensure that there is not unnecessary duplication and that State resources are coordinated in an effective manner.

(d) The child find system must include procedures for referring children to the appropriate public agency within two working days by primary referral sources.

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(iv) Day care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies; and

(viii) Other health care providers.

(e) Once referred, the evaluation and IFSP meeting must be completed within 45 calendar days.

(e) Timelines for public agencies to act on referrals. Once the public agency receives a referral, it shall, within 45 days --

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Authority: 20 U.S.C. 1476(b)(5))

Note: In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.

303.322 Comprehensive, multidisciplinary evaluation and assessment activities related to the child and the child's family must be implemented by all affected public agencies and service providers (**See Analysis** - Evaluation).

§ 303.322 Evaluation and assessment.

(a) General.

(1) Each system must include the performance of timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) Definitions of evaluation and assessment. As used in this part --

(b)(1) Defines "evaluation" to determine eligibility and the status of the child in the five specified developmental areas.

(1) "Evaluation" means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with handicaps" in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(b)(2) Defines "assessment" as ongoing procedures during the period of the child's eligibility.

(2) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify --

(i) The child's unique needs;

(ii) The family's strengths and needs related to development of the child; and

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(iii) The nature and extent of early intervention services that are needed by the child and the child's family to meet the needs in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) Evaluation and assessment of the child. The evaluation and assessment of each child must --

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Language and speech development.

(D) Psychosocial development.

(E) Self-help skills.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) Family assessment.

(1) Family assessments under this part must be designed to determine the strengths and needs of the family related to enhancing the development of the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must --

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family's description of its strengths and needs related to enhancing the child's development.

(c)(1) Evaluation and assessment must be done by qualified personnel; and

(c)(2) be based on informed clinical opinion (**See Analysis** - Assessment).

(c)(3)(ii) This includes all five developmental areas specified.

(d) This includes family assessments to determine strengths and needs of the family related to enhancing the development of the child.

(2) Family assessment is voluntary.

(3) Such assessment is to be conducted by qualified personnel; to be based on interview; and to incorporate the family's description of its strengths and needs.

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The evaluation and assessment must be completed within 45 calendar days.

(e) Timelines.

(1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e).

(2)(ii) If timelines can't be met, an interim IFSP must be developed and implemented (To be discussed under the IFSP).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will --

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345(b)(1) and (b)(2).

(Authority: 20 U.S.C. 1476(b)(3), 1477(a)(1), (d)(2), (d)(3))

Note: This section combines into one overall requirement the provisions on evaluation and assessment under the following sections of the Act: (1) Section 676(b)(3) (timely, comprehensive, multidisciplinary evaluation), and (2) Section 677(a)(1) (multidisciplinary assessment).

The section also requires that the evaluation-assessment process be broad enough to obtain information required in the IFSP concerning (1) the family's strengths and needs related to the development of the child (Section 677(d)(2)), and (2) the child's functioning level in each of the five developmental areas (Section 677(d)(1)).

303.323 The evaluation and assessment of children and families must ensure the following five nondiscriminatory procedures. All are based on previous best practices and case law regarding the evaluation of handicapped children.

§ 303.323 Nondiscriminatory procedures.

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that --

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(Authority: 20 U.S.C. 1476(b)(3), 1477(a)(1), (d)(2), (d)(3))

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INDIVIDUALIZED FAMILY SERVICE PLANS (IFSPs)

Six sections deal with the IFSP (**See Analysis - IFSP**).

The IFSP is a written plan for early intervention services to the child and family that must: be developed by qualified personnel and the family; be based on the evaluation and assessment of the child and family; and include services necessary to enhance the development of the child and the capacity of the family.

§ 303.340 General.

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 - 303.346.

(b) As used in this part, "individualized family service plan" and "IFSP" mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must --

(1) Be developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services;

(2) Be based on the multidisciplinary evaluation and assessment of the child, and the assessment of the child's family, as required in § 303.322; and

(3) Include services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.

(c) Lead agency responsibility. The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute, or assign responsibility.

(c) The lead agency must ensure that IFSPs are developed for all eligible children.

(Authority: 20 U.S.C. 1477)

Note: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in § 303.344, and (2) is developed in accordance with the requirements of this part.

§ 303.341 Meeting the IFSP requirements for years four and five.

(a) Fourth year requirements. No later than the beginning of the fourth year of a State's participation under this part, the State shall ensure that --

(a) During the fourth year the following must be provided to eligible children: evaluation and assessments; a developed IFSP (implementation is not required); and case management services.

(1) Evaluations and assessments are conducted in accordance with § 303.322;

(2) An IFSP is developed, in accordance with 303.342(a) and 303.343(a), for each child determined to be eligible under this part and the child's family; and

(3) Case management services are available to each eligible child and the child's family.

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(b) For the fifth year of State participation the IFSP must be implemented and in effect.

(b) Requirements for the fifth year. No later than the beginning of the fifth year of a State's participation under this part, a current IFSP must be in effect and implemented for each eligible child and the child's family.

(Authority: 20 U.S.C. 1476(b)(2),(b)(4), 1477(a)(2), (c))

303.342 The initial IFSP meeting must take place within the 45 calendar day evaluation period.

§ 303.342 Procedures for IFSP development, review, and evaluation.

(a) Meeting to develop initial IFSP: timelines. For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45 day time period in § 303.321(e).

(b) The IFSP must be reviewed at least every six months.

(b) Periodic review.

(1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine --

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(2) The review may be carried out through a meeting or other means acceptable to the participants (including the parents).

(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(c) There must be an annual meeting to evaluate (and probably revise) the IFSP based on required ongoing assessments. (This counts also as a six month review -- see note on following page.)

(c) Annual meeting to evaluate the IFSP. A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.

(d) IFSP meetings must be based on sufficient notice; in the native language or mode of communication of the family; and at a convenient setting and time.

(d) Accessibility and convenience of meetings.

(1) IFSP meetings must be conducted --

(i) In settings and at times that are convenient to families; and

(ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(Authority: 20 U.S.C. 1477)

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Note: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

Note- The annual evaluation may be counted as a six month periodic review.

Evaluation procedures may be needed before periodic reviews or annual evaluations of the IFSP.

§ 303.343 Participants in IFSP meetings and periodic reviews.

303.343 Participation in IFSP meetings varies by the type of meeting. The following must be included in the initial and annual meetings: 1) parent(s); 2) case manager; 3) individual(s) involved in evaluations and assessments. Additionally, the parents can involve other family members or advocates. Individual(s) providing services may attend, as appropriate.

(a) Initial and annual IFSP meetings.

(1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible to do so.

(iii) An advocate or person outside of the family, if the parent requests that the person participate.

(iv) The case manager that has been working with the family since the initial referral of the child for evaluation, or that has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in § 303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including --

(2) This section makes alternative provisions if the evaluation/assessment personnel are not available.

(i) Participating in a telephone conference call;

(ii) Having a knowledgeable authorized representative attend the meeting; or

(iii) Making pertinent records available at the meeting.

(b) Periodic review. Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) - (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(b) Required participation in the periodic reviews includes only the parent and case manager unless conditions warrant others.

(Authority: 20 U.S.C. 1477(b))

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303.344 The section specifies the actual content of the IFSP.

(a) The child's developmental status in five areas based on professionally acceptable, objective criteria.

(b) At the family's option, their strengths and needs related to enhancing the development of their child;

(c) Outcomes expected for child and family with criteria, procedures and timelines;

(d) Specific information about the services to be provided and any financial arrangements.

(2) The information must include frequency (**See Definitions**), intensity (**See Definitions**), method, and location (**See Analysis**- Least Restrictive Environment).

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§ 303.344 Content of IFSP.

(a) Information about the child's status.

(1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, language and speech development, psychosocial development, and self-help skills.

(2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) Family information. With the concurrence of the family, the IFSP must include a statement of the family's strengths and needs related to enhancing the development of the child.

(c) Outcomes. The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine --

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) Early intervention services.

(1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including --

(i) The frequency, intensity, location, and method of delivering the services; and

(ii) The payment arrangements, if any.

(2) As used in paragraph (d)(1)(i) of this section --

(i) "Frequency" and "intensity" mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis;

(ii) "Location" means, subject to § 303.12(b), where a service is provided (e.g., in the child's home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child); and

(iii) "Method" means how a service is provided.

(e) Other services.

(1) To the extent appropriate, the IFSP must include --

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) If necessary, the steps that will be undertaken to secure those services through public or private resources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

(e) As appropriate, the IFSP must include non-routine medical and other services which the child needs, but are not required under Part H, and include steps to assist the family in securing those services (See Note 2).

(f) Dates; duration of services. The IFSP must include the projected dates for initiation of the services in paragraph (d)(1) of this section, and the anticipated duration of those services.

(f) Projected initiation dates and projected duration of services.

(g) Case manager.

(1) The IFSP must include the name of the case manager from the profession most immediately relevant to the child's or family's needs, who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may --

(i) Assign the same case manager to be responsible for implementing a child's and family's IFSP who was appointed at the time that the child was initially referred for evaluation; or

(ii) Appoint a new case manager.

(3) As used in paragraph (g)(1) of this section, the term "profession" includes "case management."

(g) Name of case manager, from profession most immediately relevant (**See Analysis**- Case Management), responsible for IFSP implementation and coordination.

(2) Public agency may use initial case manager or appoint a new case manager.

(3) Case management can be considered a profession.

(h) Transition at age three.

(1) The IFSP must include the steps to be taken to support the transition of the child, upon reaching age three, to --

(i) Preschool services under Part B of the Act, to the extent that those services are considered appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include --

(i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(h) IFSP must include steps to support transition at age three and include parent training and transitional procedures for changes in service delivery.

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(iii) Transmission of information and IFSP to local education agency, with parent consent.

(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with 303.340 - 303.346.

(Authority: 20 U.S.C. 1477(d))

Note 1 stresses the role of the family for enhancing their child's development and for their determinations regarding family needs and finally accepting or declining services.

Note 1: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process are determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

Note 2 states that early intervention services in (d) are those required and in (e) are those where the case manager will assist the family.

Note 2: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12.

Clear examples of forms of assistance are indicated.

The "other services" in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the case manager, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the case manager to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services.)

The importance of the State's activities to ensure other services and to deal with their funding provisions is noted.

Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

Note 3 indicates IFSP need not be lengthy. Note 3 continues by stressing what should be clear in the IFSP.

Note 3: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the case manager in initiating those services, and (c) what actions will be taken by the parents.

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Note 4: It is important for the lead agency to take steps to ensure a smooth and effective transition of children eligible under this part to special education and related services under Part B of the Act. This is especially critical if the lead agency and the State educational agency (SEA) are not the same agency in a State. In this situation, agreement between the two agencies regarding the responsibilities of each agency during the transition period is very important. Agreements could be in the form of existing or new interagency agreements. Examples of important areas that might be addressed in such agreements include the following:

1. The assignment of financial and other responsibilities during transition, including the (a) performance of evaluations, (b) development of individualized education programs (IEPs) that meet the requirements in 34 CFR 300.340 - 300.349, if appropriate, and (c) provision of services on a continuous, uninterrupted basis.

2. Procedures to ensure a smooth transfer of responsibilities from local service providers to local educational agencies (LEAs), including any requirements for continued services under this part that are the responsibility of the LEAs.

3. Other provisions necessary to ensure effective transition of children under this part to preschool services under Part B of the Act. Agreements that are made between the two agencies need to be flexible enough to ensure that gaps in services will not occur.

Note 4 discusses the State's responsibility in ensuring transition to Part B (public school related) services and the potential need for interagency agreements.

Examples of specific areas for such agreements are suggested.

§ 303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes --

(1) The name of the case manager who will be responsible, consistent with § 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(c) The evaluation and assessment are completed within the time period required in § 303.322(e).

(Authority: 20 U.S.C. 1477(c))

303.345 This makes provisions to allow the delivery of early intervention services prior to the completion of the evaluation/ assessment/ IFSP process. The 45 day time period is not changed. Parental consent is obtained, a case manager is designated, and an interim IFSP for immediately needed services is developed.

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Note: This section allows needed services without circumventing timelines.

Note: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible); and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.

303.346 This states that agencies providing services are not accountable for the child's progress if they have made a good faith effort towards achieving IFSP outcomes.

§ 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part H of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

(Authority: 20 U.S.C. 1477)

PERSONNEL TRAINING AND STANDARDS

303.360 Each State system of early intervention must include a Comprehensive System of Personnel Development (CSPD) (**See Analysis** - Personnel Development). The State's Part B system can be used if it meets the provisions of (b).

(b) The CSPD must, to the extent appropriate, provide interdisciplinary preservice and inservice training for a variety of specified personnel to meet children's needs and assist families in meeting those needs.

§ 303.360 Comprehensive system of personnel development.

(a) Each system must include a comprehensive system of personnel development. Subject to paragraph (b) of this section, a State's current personnel development system required under Part B of the Act (34 CFR §§ 300.380 - 300.387) may be used to satisfy this requirement.

(b) The personnel development system under this part must --

(1) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

(2) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as case managers; and

(3) Ensure that the training provided relates specifically to --

(i) Meeting the interrelated psychosocial, health, developmental, and educational needs of eligible children under this part; and

(ii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(Authority: 20 U.S.C. 1476(b)(8))

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§ 303.361 Personnel standards.

(a) As used in this part --

(1) "Appropriate professional requirements in the State" means entry level requirements that --

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families, who are served by State, local, and private agencies.

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) "Profession or discipline" means a specific occupational category that --

(i) Provides early intervention services to children eligible under this part and their families;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) (1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for

303.361 This contains provisions related to the standards for qualified personnel (**See Analysis** - Personnel Standards).

(1) "Appropriate professional requirements," which are defined as being based on the highest requirements in the State (**See Analysis** - Personnel Standards), thus establish suitable qualifications.

(2) "Highest requirements in State applicable" are defined.

(3) "Profession" or "discipline" is defined.

(4) "State approved requirements" are defined.

(b) Each State must develop standards for personnel that are consistent with State approved requirements, to ensure adequate preparation .

(c) The State's application must include steps it will take to retrain or hire personnel where the State's standard is not based on the highest applicable requirements (**See Analysis** - Personnel Standards).

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notifying public agencies and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d) To meet the prior two sections, the current status of personnel standards must be determined and maintained on public file.

(d) (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) "Highest requirements" includes the consideration of all State agencies applicable to serving children and families under Part H.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(Authority: 20 U.S.C. 1476(b)(13))

Note explains that States are required to use their own highest requirements and are not required to use any particular training standard. States can determine, revise or expand occupational categories to provide early intervention services.

Note: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.

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303.400 The lead agency in the State must establish or adopt procedural safeguards meeting the requirements of Subpart E and ensure that they are effectively implemented by each public agency involved in providing early intervention services.

303.401 Defines "consent," "native language," and "personally identifiable."

Parental consent must be informed, must be in writing, and can be revoked at any time. Agencies need to provide relevant information in a manner understandable to the parent and the consent form must specify what activity or activities are receiving consent.

"Native language" means the language or mode of communication used by the parent.

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Subpart E -- Procedural Safeguards

GENERAL

§ 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency shall be responsible for --

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart, and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1480)

§ 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart --

(a) "Consent" means that --

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(b) "Native language," when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) "Personally identifiable" means that information includes --

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1480)

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under Part B of the Act (CFR 300.560 - 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1480(3))

303.402 Parent can inspect and review all records involving the child and the child's family.

§ 303.403 Prior notice; native language.

(a) General. Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) Content of notice. The notice must be in sufficient detail to inform the parents about --

(1) The action that is being proposed or refused;

(2) The reasons for taking the action; and

(3) All procedural safeguards that are available under this part.

(c) Native language.

(1) The notice must be --

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that --

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this pargraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1480(5), (6))

303.403 Reasonable prior written notice, in the native language or mode of communication of the parents, is required to initiate or change the identification, evaluation or placement of a child.

(b) The content of the notice must include the action, reasons, and procedural safeguards available.

(c) This specifies conditions necessary to enable the notice to be in the native language of the parents.

It is important to understand the differences between notice (this section) and consent (in the following section).

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303.404 Consent is required before the initial evaluation/assessment or initial provision of early intervention services.

(b) When consent is not given, the agency must ensure that parents are aware of what is being proposed (similar to informed notice) and that, without consent, such services cannot be provided.

Note 1 states that all of the referenced requirements are included in Part Three of this volume.

Note 2 explains that public agencies could seek, through formal due process procedures, to obtain permission to evaluate a child. Even in this case parental consent would be required to initiate services other than initial evaluation.

303.405 Procedures to provide surrogate parents are provided when a parent cannot be identified or the child is a ward of the State.

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§ 303.404 Parent consent.

(a) Written parental consent must be obtained before --

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services for the first time (i.e., at the time that the initial IFSP is developed).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent --

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1480)

Note 1: In addition to the consent requirements in this section, other consent requirements (regarding personally identifiable information) are included in the confidentiality requirements in the regulations under Part B of the Act (34 CFR 300.571), and in 34 CFR Part 99 (Family Educational Rights and Privacy), both of which apply to this part.

Note 2: The Part B regulations contain procedures to enable public agencies to initiate a due process hearing or use other procedures to override a parent's refusal to consent to the initial evaluation of the parent's child. Those procedures apply to eligible children under this part, since the Part B evaluation requirement applies to all handicapped children in a State, including infants and toddlers.

§ 303.405 Surrogate parents.

(a) General. Each lead agency shall ensure that the rights of children eligible under this part are protected if --

(1) No parent (as defined in § 303.18) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) Duty of lead agency and other public agencies. The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for --

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) Criteria for selecting surrogates.

(1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent --

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) Non-employee requirement; compensation.

(1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) Responsibilities. A surrogate parent may represent a child in all matters related to --

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1480(4))

The lead agency or other public agencies must determine the need for a surrogate and, if needed, assign the surrogate in any way permitted under State law.

(2) Surrogates must not have interests that conflict with the interests of the child and must have adequate skills to represent the child.

(d) The surrogate may not be an employee of the agency involved in providing services, but could be compensated for such services by a public agency.

IMPARTIAL PROCEDURES FOR RESOLVING INDIVIDUAL CHILD COMPLAINTS

§ 303.420 Administrative resolution of individual child complaints by an impartial decision-maker.

Each system must include written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in 303.403(a). A State may meet this requirement by --

(a) Adopting the due process procedures in 34 CFR 300.506 - 300.513; or

(b) Developing procedures that --

(1) Meet the requirements in §§ 303.421 - 303.425; and

(See Analysis- Procedural Safeguards).

303.420 The State must have impartial procedures to resolve complaints regarding identification, assessment, or placement. The State can use the Part B procedures or develop Part H procedures.

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(2) Provide parents a means of filing a complaint.

(Authority: 20 U.S.C. 1480(1))

Note 1 clarifies that there are two types of complaint procedures required under these regulations. Both types will be discussed under the complaint section of Chapter 16.

Note 1: Sections 303.420 - 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of an impartial decision-maker, who is not an employee of any agency involved in the provision of early intervention services, to resolve a dispute between the parent and the public agency. The agency is bound by the decision of the impartial decision-maker, and is required to implement the decision, unless it is reversed on appeal.

A different type of administrative procedure is included in § 303.510 - 303.512 of Subpart F. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints, and those that are systemic in nature), and (2) resolving the complaint, if the agency determines that a violation has occurred.

Note 2 explains that the State may offer a mediation process to attempt to resolve the complaint as rapidly as possible. If offered, this informal procedure is not required and it cannot extend the time requirements for the formal resolution.

Note 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

In an effort to facilitate resolution, States may wish, with parental concurrence, to offer mediation as an intervening step prior to implementing the procedures in this section. Although mediation is not required under either Part B or Part H of the Act, some States have reported that mediations conducted under Part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in § 303.423.

§ 303.421 Appointment of an impartial person.

303.421 This specifies the qualifications and duties of the impartial person.

(a) Qualifications and duties. An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must --

(1) Have knowledge about the provisions of this part, and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

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(ii) Provide a record of the proceedings, including a written decision.

(b) Definition of impartial.

(1) As used in this section "impartial" means that the person appointed to implement the complaint resolution process --

(i) Is not an employee of any agency or program involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Authority: 20 U.S.C. 1480(1))

(b) "Impartial" is defined consistently with the previous expectations for surrogates, and such persons may similarly be compensated without being considered employees.

§ 303.422 Parent rights in administrative proceedings.

(a) General. Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420.

(b) Rights. Any parent involved in an administrative proceeding has the right to --

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence, and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Authority: 20 U.S.C. 1480)

303.422 This specifies five rights that must be afforded to parents in administrative hearings (**See Analysis** - Procedural Safeguards).

§ 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

303.423 Proceedings must be at a time and place reasonably convenient to parents.

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(b) A written decision must be mailed to the parties not later than 30 calendar days after receiving the parent's complaint.

Note indicates that if the State adopts Part B impartial procedures, their 45 day requirement would control the timelines. However, a 30 day period is encouraged.

(b) Each lead agency shall ensure that not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

(Authority: 20 U.S.C. 1480(1))

Note: Under Part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under Part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part -- from 45 days to the 30-day timeline in this section. Because the needs of children in the birth through two age range change so rapidly, quick resolution of complaints is important.

303.424 Parties to the findings and decision can take civil action in State or Federal courts.

§ 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

(Authority: 20 U.S.C. 1480(1))

303.435 Children must continue to receive their current services during the complaint proceedings unless otherwise agreed by the public agency and the parents.

§ 303.435 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Authority: 20 U.S.C. 1480(7))

CONFIDENTIALITY

303.460 The State must develop procedures to ensure confidentiality. The referenced procedures are included as Chapter 14.

§ 303.460 Confidentiality of information.

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 - 300.576, with the following modifications:

(1) Any reference to the "State educational agency" means the lead agency under this part.

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(2) Any reference to "education of handicapped children," "education of all handicapped children," or "provision of free public education to all handicapped children" means the provision of services to children eligible under this part and their families.

(3) Any reference to "local educational agencies" and "intermediate educational units" means local service providers.

(4) Any reference to 34 CFR 300.18 means §§ 303.164 and 303.321.

(5) Any reference to 34 CFR 300.129 means this section (§ 303.460).

(Authority: 20 U.S.C. 1480(2), 1483)

(b) To enable the appropriate use of the referenced confidentiality policies and procedures, five sets of modifications are prescribed.

Note: With the modifications in paragraphs (b)(1) through (b)(5) of this section, the confidentiality requirements in the regulations implementing Part B of the Act (34 CFR 300.560 - 300.576) are to be used by public agencies to meet the confidentiality requirements under Part H of the Act and this section (303.560).

The Part B provisions incorporate by reference the regulations in 34 CFR Part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

Note indicates that both the Part B regulations and the regulations under the Family Educational Rights and Privacy Act apply. Both are included as Part Three of this volume.

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303.500 Each statewide system of early intervention services must have a lead agency, selected by the Governor, responsible for the administration of the system.

303.501 The lead agency is responsible for the administration, supervision and monitoring of programs and activities receiving assistance under Part H. Additionally, they must enforce obligations, correct deficiencies, and provide technical assistance.

303.510 The lead agency must have procedures for receiving and resolving complaints.

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Subpart F -- State Administration

GENERAL

§ 303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that --

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.501 Supervision and monitoring of programs.

(a) General. Each lead agency is responsible for the general administration, supervision, and monitoring of programs and activities receiving assistance under this part, to ensure compliance with the provisions of this part.

(b) Methods of administering programs. In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use, proper methods of administering each program, including

(1) Monitoring of agencies, institutions, and organizations receiving assistance under this part;

(2) Enforcement of any obligations imposed on those agencies under Part H of the Act and these regulations;

(3) providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correction of deficiencies that are identified through monitoring.

(Authority: 20 U.S.C. 1476(b)(9)(A))

LEAD AGENCY PROCEDURES FOR RESOLVING COMPLAINTS

§ 303.510 Adopting complaint procedures.

Each lead agency shall adopt written procedures for --

(a) Receiving and resolving any complaint that one or more requirements of this part are not being met; and

(b) Conducting an independent on-site investigation of a complaint if the lead agency determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 1476(b) (9))

Note: Because of the interagency nature of Part H of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State's early intervention program, or (3) private service providers that receive Part H funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. Complaints under these procedures are filed with the lead agency.

(b) The complaint procedures must have the capability of on-site investigation if necessary.

Note: This second complaint procedure provides for systemic complaints involving any public agency, service provider, and so forth.

§ 303.511 An organization or individual may file a complaint.

An individual or organization may file a written signed complaint with the lead agency. The complaint must include --

(a) A statement that the State has violated a requirement of Part H of the Act or the regulations in this part; and

(b) The facts on which the complaint is based.

(Authority: 20 U.S.C. 1476(b)(9))

303.511 Written complaints may be filed and must include the factual basis for the complaint.

§ 303.512 Minimum complaint procedures.

Each lead agency shall include the following in its complaint procedures:

(a) A time limit of 60 days after the agency receives the complaint --

(1) To carry out an independent on-site investigation, if necessary; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the lead agency.

(Authority: 20 U.S.C. 1476(b)(9))

303.512 Complaint procedures must be resolved within a 60 day time limit, including any on-site investigations.

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POLICIES AND PROCEDURES RELATED TO FINANCIAL MATTERS

303.520 The State must establish policies, reflected in interagency agreements, establishing how early intervention services will be paid.

§ 303.520 Policies related to payment for services.

(a) General. Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must --

(1) Meet the requirements in paragraph (b) of this section; and

(2) Be reflected in the interagency agreements required in § 303.523.

(b) State policies must specify what services will be provided at no cost or those subject to a system of payments. Specific requirements and assurances must be included in State funding policies.

(b) Specific funding policies. A State's policies must --

(1) Specify which functions and services will be provided at no cost to all parents;

(2) Specify which functions or services, if any, will be subject to a system of payments, and include --

(i) Information about the payment system and schedule of sliding fees that will be used; and

(ii) The basis and amount of payments; and

(3) Include an assurance that --

(i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and

(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family.

(c) The State will implement a mechanism to prevent delay or denial of services due to disputes between agencies for financial or other reasons.

(c) Procedures to ensure the timely provision of services. No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

(Authority: 20 U.S.C. 1476(b)(9))

303.521 This section specifies required functions of the statewide system that must be carried out at public expense.

§ 303.521 Fees.

(a) General. A State may establish, consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.

(b) Functions not subject to fees. The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in § 303.321;

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(2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12.

(3) Case management, as included in §§ 303.6 and 303.344(g).

(4) Administrative and coordinative activities related to --

(i) The development, review, and evaluation of IFSPs in §§ 303.340 - 303.346; and

(ii) Implementation of the procedural safeguards in Subpart E and the other components of the statewide system of early intervention services in Subparts D and F.

(b) These functions include child find, evaluation and assessment, case management, and administrative and coordinating activities including procedural safeguards.

(c) States with mandates to serve children from birth. If a State has in effect a State law requiring the provision of a free appropriate public education to children with handicaps from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(c) States with prior mandates for free appropriate public education for handicapped children, birth to two, may not charge parents for any services required under the respective State law.

(Authority: 20 U.S.C. 1472(2))

§ 303.522 Identification and coordination of resources.

303.522 The lead agency must identify and coordinate all available financial resources for early intervention in an on-going manner.

(a) Each lead agency is responsible for --

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include --

(b) Six federal programs are specified here for resource coordination along with the expectation for coordination with other federal programming.

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and H of the EHA;

(5) Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended;

(6) The Developmentally Disabled Assistance and Bill of Rights Act (Pub. L. 94-103); and

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(7) Other Federal programs.

(Authority: 20 U.S.C. 1476(b)(9)(B))

303.523 The lead agency is responsible for establishing interagency agreements with State agencies providing early intervention services.

(b) Agreements must specify financial responsibility of the agency.

(c) Agreements must have procedures for resolving disputes in a timely manner, first allowing internal agency resolution, prior to some external procedures.

(d) Agreements must include any additional components necessary to ensure cooperation and coordination among agencies.

Note indicates several ways disputes could be resolved.

303.524 This requires lead agency actions during the period of a dispute.

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§ 303.523 Interagency agreements.

(a) General. Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) Financial responsibility. Each agreement must define the financial responsibility of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) Procedures for resolving disputes.

(1) Each agreement must include procedures for achieving a timely resolution of intra- and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must --

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) Additional components. Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

(Authority: 20 U.S.C. 1476(b)(9)(F))

Note: A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

§ 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b) (1) During the pendency of a dispute, the lead agency shall --

(i) Assign financial responsibility to an agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) Pay for the service, in accordance with the "payor of last resort" provisions in § 303.527.

(2) If, in resolving the dispute, the lead agency determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made, the lead agency shall --

(i) Reassign the responsibility to the appropriate agency; and

(ii) Make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall --

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures in § 303.525.

(Authority: 20 U.S.C. 1476(b)(9)(E))

(b) During a dispute, the lead agency will pay for the service or assign the financial responsibility to another agency. When the dispute is resolved, the responsibility can be reassigned and reimbursements assigned. A lack of compliance with such assignments shall lead to referrals to the ICC or Governor.

§ 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the Resolution of disputes among public agencies or service providers.

(Authority: 20 U.S.C. 1476(b)(9)(D))

303.525 While disputes are pending, the lead agency must have procedures to enable the timely delivery of services to children and families.

§ 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include --

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(Authority: 20 U.S.C. 1476(b)(10))

303.526 The system must include a policy for contracting for services that allows service providers to understand the mechanisms and requirements of the lead agency to provide services. Service providers must be required to meet State standards.

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Note indicates that the State may choose to use existing service providers if they meet State standards.

Note: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

303.527 Part H funds can not be used to fund services that would otherwise be paid for from another source.

§ 303.527 Payor of last resort.

(a) Nonsubstitution of funds. Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source but for the enactment of Part H of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) Interim payments; reimbursement.

(b) Part H funds can be temporarily used to pay for non-medical services to prevent a delay of services pending reimbursement from the agency ultimately responsible.

(1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for --

(i) Early intervention services, as described in § 303.12;

(ii) Eligible health services (see § 303.13); and

(iii) Other functions and services authorized under this part, including child find, and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or "well-baby" health care (see § 303.13(c)(1)).

(c) Part H provisions can not be used to reduce assistance or alter eligibility under maternal and child health or Medicaid.

(c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (SSA) (relating to maternal and child health) or Title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

(Authority: 20 U.S.C. 1481)

Note clarifies (c): the requirement that existing funding must continue.

Note: The Congress intended that the enactment of part H not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in Section 411(k)(13) of the Medicare

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Catastrophic Coverage Act of 1988 (Pub.L. 100-360) an amendment to Title XIX of the Social Security Act. That amendment states, in effect, that nothing in that title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to a handicapped infant or toddler because such services are included in the child's IFSP adopted pursuant to Part H of the EHA.

In separate legislation, Congress has prohibited changes in Medicaid that would restrict Medicaid payments because services were in an IFSP.

§ 303.528 Reimbursement procedure.

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with § 303.527(b)

(Authority: 20 U.S.C. 1476(b)(11))

303.528 Statewide systems must include a procedure to secure, in a timely manner, the reimbursement of Part H funds used to make interim payments.

REPORTING REQUIREMENTS

§ 303.540 Data collection.

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must --

(1) Include a process for --

(i) Collecting data from various agencies and service providers in the State;

(ii) Making use of appropriate sampling methods, if sampling is permitted; and

(iii) Describing the sampling methods used, if reporting to the Secretary; and

(2) Provide for reporting the data required under Section 676(b)(14) of the Act, and other information that the Secretary may require, including information required under Section 618 of the Act.

(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.

(Authority: 20 U.S.C. 1476(b)(14))

303.540 This requires the State to compile information as requested by the Federal government.

USE OF FUNDS FOR STATE ADMINISTRATION

§ 303.560 Use of funds by the lead agency.

A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with handicaps.

(Authority: 20 U.S.C. 1473; 1476(b)(9))

303.560 The lead agency may use Part H funds to administer the program.

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303.600 Fifteen-member Interagency Coordinating Councils (ICC) must be established. The members and chair are to be appointed by the Governor to represent the population of the State.

Note suggests ways that the State can increase the representation through ex officio ICC members and the establishment of regional or special committees. It suggests that special attention should be made to maintain a significant proportion of parents and rural representation.

303.601 Specifies the composition of the ICC. (a) The required backgrounds of eight of the fifteen council members are specified.

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Subpart G -- State Interagency Coordinating Council

GENERAL

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council composed of 15 members.

(b) The Council and the chairperson of the Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(Authority: 20 U.S.C. 1482(a))

Note: The number of members on the Council was established by statute. However, to the extent that a State determines that full and effective representation requires more than 15 members, it would be appropriate for the Council to request the Governor to appoint additional members on an ex officio basis, or, with the permission of the Governor, for the Council chairperson to take that action.

In addition to appointing ex officio members to the council, consideration might be given to establishing (1) regional committees, or (2) special committees to address key issues related to the effective implementation of this part.

To the extent that additional members are added -- either on an ex officio basis or through the establishment of regional or special committees -- the Council may wish to ensure that the general proportion of parents on the Council (as specified in § 303.601(a)) is maintained. However, to avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

In any deliberations by the Council for increasing the number of people who have a role in Council activities, it is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

§ 303.601 Composition.

The Council must be composed of the following:

(a) At least --

(1) Three members who are parents of infants and toddlers with handicaps or of handicapped children aged three through six;

(2) Three public or private providers of early intervention services;

(3) One representative from the State legislature; and

(4) One person in personnel preparation.

(b) Other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to eligible children and their families, and others selected by the Governor.

(Authority: 20 U.S.C. 1482(b))

(b) The remaining members are to represent each of the agencies involved in providing services, plus others.

Note: In order to enhance the effectiveness of the Council in carrying out its functions under this part, it is recommended that efforts be made to include representatives of each State agency or other major service provider that has a role in the State's early intervention program, such as the State health and education departments, health care providers, and other key providers. It is important for State agency representatives to have the authority to effectively represent their agencies.

A representative of the SEA who is responsible for, or knowledgeable about, the Preschool Grants Program under Section 619 of the Act (34 CFR Part 301) would be an appropriate person to be appointed as a regular member of the Council. Inclusion of such a person will help to ensure the smooth transition of children under this part who will require special education and related services under that program.

It is recommended that the person selected to represent the field of personnel preparation have expertise in early intervention programs for children eligible under this part and their families.

Note stresses the importance of appointing key agency individuals who have the authority to effectively represent their agencies. It suggests the inclusion of the Section 619 coordinator responsible for services to handicapped children ages three to five and the specific background of the individual to be involved in personnel preparation.

§ 303.602 Use of funds by the Council.

(a) General. Subject to the approval by the Governor, the Council may use funds under this part to hire staff and obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

303.602 The ICC can hire staff, subject to the approval of the Governor.

(b) Compensation and expenses of Council members.

(1) Except as provided in paragraph (b)(2) of this section, Council members shall serve without compensation from funds available under this part, but the Council shall reimburse its members for reasonable and necessary expenses for attending meetings and performing Council duties. Funds provided under this part may be used for this purpose.

(b) Council members may be compensated if they are either unemployed or must forfeit wages when participating with the ICC.

(2) Funds under this part may be used to pay compensation if --

(i) A Council member is not employed; or

(ii) A Council member must forfeit wages from other employment when participating in official Council functions.

(Authority: 20 U.S.C. 1479; 1482(c), (d))

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303.603 The ICC must meet at least quarterly in open, properly announced, accessible meetings.

§ 303.603 Meetings.

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must --

(1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.

(Authority: 20 U.S.C. 1482(c), (d))

303.604 Council members may not vote on matters that would provide them direct financial benefit or give appearance of a conflict of interest.

§ 303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Authority: 20 U.S.C. 1482(f))

FUNCTIONS OF THE COUNCIL

303.650 This section specifies four functions where the ICC shall advise and assist the lead agency including the development and implementation of the statewide system and dispute resolution.

§ 303.650 General.

Each Council shall --

(a) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(b) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(c) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes --

(1) Seeking information from service providers, case managers, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(2) Taking steps to ensure that any policy problems identified under paragraph (c)(1) of this section are resolved; and

(d) To the extent appropriate, assist the lead agency in the resolution of disputes.

(Authority: 20 U.S.C. 1482(e))

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§ 303.651 Advising and assisting the lead agency in its administrative duties.

Each Council shall advise and assist the lead agency in the --

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) promotion of the interagency agreements under § 303.523.

(Authority: 20 U.S.C. 1482(e)(1))

303.651 The Council shall also advise and assist the lead agency in identifying resources, assigning financial responsibility, and promoting interagency agreements.

§ 303.652 Applications.

Each Council shall advise and assist the lead agency in the preparation of applications under this part, and amendments to those applications.

(Authority: 20 U.S.C. 1482(e)(2))

303.652 The Council shall advise and assist the lead agency in the preparation of applications and amendments for Part H participation.

§ 303.653 Annual report to the Secretary.

(a) Each Council shall --

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Authority: 20 U.S.C. 1482(e)(3))

303.653 The Council shall prepare annual reports for the Governor and the Secretary of Education containing information as specified.

EXISTING COUNCILS

§ 303.670 Use of existing councils.

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in this subpart (e.g., in terms of its composition, meetings, and functions), that Council is considered to be in compliance with these requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with the requirements of this subpart.

(Authority: 20 U.S.C. 1482(g))

Source: Federal Register, June 22, 1989

303.670 Early Intervention Councils existing before 9/1/86 may continue to be used if they are brought into compliance during the first four years of Part H participation.

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Part Three

Supportive Regulations

The State's policies and procedures to ensure confidentiality of information, developed according to 303.460 in Chapter 11, must meet the requirements listed in 300.560 - 300.575. This chapter provides those requirements.

300.560 This section provides three definitions.

300.561 This requires the lead agency to give notice to inform parents about how the State will ensure the identification and evaluation of handicapped children. This section places four requirements for inclusion in the notice. Similar actions are also required under the child find and public awareness components of Part H in Chapter 10.

Content referred to as Part 99 (FERPA) is provided in Chapter 15.

300.562 This provides for parental access to records as also provided in Part H - 303.402.

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CONFIDENTIALITY OF INFORMATION

§ 300.560 Definitions.

As used in this subpart:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.561 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 300.128 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under section 438 of the General Education Provisions Act and Part 99 of this title (the Family Education Rights and Privacy Act of 1974, and implementing regulations).

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected,

maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D);1417(c))

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, obtained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

These regulations place a time limit on responding to record requests.

(b) (1) This provides a right to receive a response from the agency for explanations and interpretations of records.

(b)(2) This provides a right to request records (presumably unknown) that, if provided, would assist the parent in inspecting and reviewing records (in general).

300.562 Record access requirements in this section apply to Part H.

300.564 and 300.565 Both contain new requirements for Part H records that are self-explanatory.

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300.566 This section allows charging fees for records under certain conditions. The "functions not subject to fees" provision of Part H in 303.521(b), however, appear to prohibit such charging of record fees.

§ 300.566 Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

300.567 FERPA requirements in Subpart C of the following chapter have more extensive requirements than these regarding the amendment of records. These three points, however, apply to Part H.

§ 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time or receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

300.568 This paragraph provides for a hearing to challenge educational records. When developing procedures for hearings under 303.420, States should include this reason with those provided in Part H for hearings.

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D): 1417(c))

300.569 This explains how the results of a hearing will influence the content of the educational records in question and provides for the permanent inclusion of parental statements in the record. These statements must also be disclosed, at all times, with the records.

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy (or) other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

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(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.570 Hearing procedures.

A hearing held under § 300.568 of this subpart must be conducted according to the procedures under § 99.22 of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

300.570 Part H already provides for hearing procedures that appear to be met by the Part H or B requirements with little or no modification.

§ 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement under this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

300.571 This extends the consent requirements for disclosure of the IFSP in 303.344(h)(2)(ii) to all educational records. Some provisions for disclosure to participating agencies are provided.

(c) Such provisions for consent are clear in the Part H regulations and were noted in Part 2 of this volume.

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.129 of Subpart B and Part 99 of this title.

300.572 This requires four provisions to ensure the confidentiality of records, applicable to Part H service providers, including training for all persons using personally identifiable information.

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(d) This listing should be available at all Part H funded service agencies.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

300.573 This section requires informing the parents when educational records are no longer needed. A basic permanent record can be maintained.

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Comment: Destruction of records protects against unauthorized disclosure, but the records could be helpful to parents for other purposes at a later date.

Comment. Under § 300.573, the personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b).

300.574 This is not applicable for the Part H program since it is directed towards the rights and needs of older children.

§ 300.574 Children's rights.

The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Comment. Note that under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.4(a)), the rights of parents regarding education records are transferred to the student at age 18.

300.575 The State must describe in its plan how these requirements are monitored and enforced.

§ 300.575 Enforcement.

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(2)(D) 1417(c))

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§ 300.576 Department.

If the Department or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 522a (The Privacy Act of 1974), the Secretary shall apply the requirements of 5 U.S.C. section 552a(b)(1)-(2),(4)-(11);(c);(d); (e)(1);(2);(3)(A),(B), and (D), (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

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These are the regulations referenced in the confidentiality requirements of Chapter 14. (The confidentiality requirements were referenced in the Part H requirements.)

The regulations are divided into five subparts (A-E) that contain a total of 29 sections.

The regulations begin with a numerical listing of the subparts, sections, and other headings for quick reference purposes.

The definitions (Chapter 17) will include all definitions (99.3) here, along with those from the other regulations in this volume.

All of these numerical listings will be repeated in the actual contents of the subparts. The content-specific notations will be included at those locations.

The numbering system allows one to quickly determine the subpart location of an individual section:

Subpart A= 99.1- . 7
Subpart B= 99.10- .12
Subpart C= 99.20- .22
Subpart D= 99.30- .37
Subpart E= 99.60- .67

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The Secretary revises Part 99 of Title 34 of the Code of Federal Regulations to read as follows:

PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A--General

§99.1 To which educational agencies or institutions do these regulations apply?
§99.2 What is the purpose of these regulations?
§99.3 What definitions apply to these regulations?
§99.4 What are the rights of the parents?
§99.5 What are the rights of eligible students?
§99.6 What information must an educational agency's or institution's policy contain?
§99.7 What must an educational agency or institution include in its annual notification?

Subpart B--What are the Rights of Inspection and Review of Education Records?

§99.10 What rights exist for a parent or eligible student to inspect and review education records?
§99.11 May an educational agency or institution charge a fee for copies of education records?
§99.12 What limitations exist on the right to inspect and review records?

Subpart C--What are the Procedures for Amending Education Records?

§99.20 How can a parent or eligible student request amendment of the student's education records?
§99.21 Under what conditions does a parent or eligible student have the right to a hearing?
§99.22 What minimum requirements exist for the conduct of a hearing?

Subpart D--May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

§99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?
§99.31 Under what conditions is prior consent not required to disclose information?
§99.32 What record keeping requirements exist concerning request and disclosures?
§99.33 What limitations apply to the redisclosure of information?
§99.34 What conditions apply to disclosure of information to other educational agencies or institutions?
§99.35 What conditions apply to disclosure of information for Federal or State program purposes?
§99.36 What conditions apply to disclosure of information in health and safety emergencies?
§99.37 What conditions apply to disclosing directory information?

Subpart E--What are the Enforcement Procedures?

§99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?
§99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?
§99.62 What information must an educational agency or institution submit to the Office?
§99.63 Where are complaints filed?
§99.64 What is the complaint procedure?
§99.65 What is the content of the notice of complaint issued by the Office?
§99.66 What are the responsibilities of the Office in the enforcement process?
§99.67 How does the Secretary enforce decisions?

Authority: § 438. Pub. L. 90-247. Title IV as amended.
§§ Stat. 571-574 (20)U.S.C. 1232g unless otherwise noted.

Subpart A--General

§ 99.1 To which educational agencies or institutions do these regulations apply?

99.1 These regulations apply to Part H funded programs and activities.

(a) This part applies to an educational agency or institution to which funds have been made available under program administered by the Secretary of Education that--

(1) (i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

(ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provision Act inapplicable.

(Authority: (20 U.S.C. 1230, 1232g, 3487, 3507))

(b) The following chart lists the funded programs to which Part 99 does not apply as of April 11, 1988;

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) this section--

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

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(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

99.2 This paragraph states the purpose of these regulations.

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

Note- The portion of the cited regulations that applies to Part H was included as Chapter 14 of this volume.

(Note: 34 CFR 300.560--300.578 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

99.3 This provides 14 definitions. All are included alphabetically in Chapter 17.

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to--

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

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"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under § 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records"

(a) The term means those records that are--

(1) Directly related to a student; and
(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include--

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are--

(i) Maintained separately from education records;

(ii) Maintained solely for law enforcement purposes; and

(iii) Disclosed only to law enforcement officials of the same jurisdiction;

(3) (i) Records relating to an individual who is employed by an educational agency or institution, that--

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is

Disclosure is any communication of personally identifiable information through any means.

Education records are those records directly related to the student maintained by or for an agency.

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attending an institution of postsecondary education, that are--

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the "treatment." For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level: "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" includes individuals acting as a parent, a broad definition as in Part H 303.405.

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes any personal identifiers (including social security numbers) or characteristics allowing identification.

"Personally identifiable information" includes, but is not limited to--

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

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(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student", except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

"Record" is any information in any format.

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

99.4 These rights apply to either parent unless some legal document specifically revokes these rights.

§ 99.5 What are the rights of eligible students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

99.5 This applies to students over age 18.

§ 99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding

99.6 A policy must be adopted that indicates:

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how the agency or institution meets the requirements of the Act and of this part. The policy must include--

(1) how parents are informed of their rights;

(1) How the agency or institution informs parents and students of their rights, in accord with § 99.7;

(2) how to inspect and review records;

(2) How a parent or eligible student may inspect and review education records under § 99.10, including at least--

(i) The procedure the parent or eligible student must follow to inspect and review the records;

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

(iii) A schedule of fees (if any) to be charged for copies; and

(iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) assurance that personally identifiable information will not be disclosed without consent.

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in § 99.31;

(4) Specific Part H regulations exclude this option and it should not be used for Part H funded activity.

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under § 99.1(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) Specific Part H regulations exclude this option and it should not be used for Part H funded activity.

(5) A statement that a record of disclosures will be maintained as required by § 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under § 99.37; and

(7) Assurance must be provided that record correction is permitted, a hearing is available, and statements can be placed in the records.

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under § 99.20, to obtain a hearing under § 99.21(a), and to add a statement to the record under § 99.21(b)(2).

(b) This policy must be written and available.

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

(Authority: 20 U.S.C. 1232g(e) and (f))

(Approved by the Office of Management and Budget under control number 1880-0308)

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§ 99.7 What must an educational agency or institution include in its annual notification?

(a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to--

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under § 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under § 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under § 99.6 are located.

(c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(d) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary home language other than English.

(Authority: 20 U.S.C. 1232g(e))

(Approved by the Office of management and Budget under control number 1880-0308)

99.7 Parents must be notified annually of their rights under this Act. This section has a variety of specific requirements for such notification that apply to Part H funded agencies.

Eligible students are defined on page 135 as those over 18 years of age or attending post-secondary institutions. For this reason, only parents will require notification under this section.

Subpart B--What are the Rights of Inspection and Review of Education Records?

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

99.10 Part H regulations already have requirements equal to or greater than these requirements.

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(c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in § 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

99.11 As discussed under the previous confidentiality chapter, fees for records are probably not allowable under Part H.

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

§ 99.12 What limitations exist on the right to inspect and review records?

(a) This is the same requirement as in Chapter 14.

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) The situations in this section are not applicable to Part H students.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are--

(1) Financial records, including any information those records contain of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if--

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(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's--

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if--

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall--

(i) Give the student, on request, the names of the individuals who provided the letters and statement of recommendations; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3) (i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1)(A) and (B))

(c) The situations in this section are not applicable to Part H students.

Subpart C--What are the Procedures for Amending Education Records?

§ 99.20 How can a parent or eligible student request amendment of the student's education records?

99.20 These procedures are consistent with those provided in the previous confidentiality chapter (300.567).

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its

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decision and of his or her right to a hearing under § 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

99.21 These procedures are consistent with those provided in the previous confidentiality chapter (300.568 - 300.569).

§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall--

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall--

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

99.22 The FERPA hearing requirements regarding educational records are less stringent than either the Part H or B requirements for due process hearings and administrative complaints.

§ 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by § 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

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(c) The hearing may be conducted by any individual including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D--May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

§ 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

99.30 Written consent of a parent is required before personally identifiable information is disclosed.

(a) Except as provided in § 99.31, an educational agency or institution shall obtain a signed and dated written consent of a parent or an eligible student before it discloses personally identifiable information from the student's education records.

(b) Three areas of specific content are listed here and are required in the written consent.

(b) The written consent must--

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section--

(c) Parents, at their request, may have a copy of the records disclosed.

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

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99.31 This provides a variety of conditions under which consent is not required for disclosure of personally identifiable information. While such conditions exist, these exceptions will have limited application to Part H records. Because Part H regulation 303.344(h)(2)(ii) requires consent for disclosure to the local education agency, it is clear that disclosure is greatly restricted.

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of § 99.35, to authorize representatives of--

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4) (i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to--

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) This regulation allows any internal State disclosure requirements in effect before FERPA was enacted to remain valid and not require parental consent.

(5) (i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type (of) State or local officials to whom disclosures may be made under that paragraph.

(6) (i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to--

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(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if--

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9) (i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in § 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in § 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(b) This section does not forbid or require an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A)(b)(1) and (b)(2)(B))

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99.32 Specific records must be maintained on all requests for access and each disclosure unless they are: (1) from the parent; (2) within the agency; (3) based on written consent from the parent; and (4) from a party seeking directory information.

§ 99.32 What record keeping requirements exist concerning requests and disclosures?

(a) (1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include--

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include--

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under § 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student.

(1) The parent or eligible student.

(2) The school official or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in § 99.31(a)(1) and (3) for the purpose of auditing the record keeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to--

(1) The parent or eligible student;

(2) A school official under § 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

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§ 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if--

(1) The disclosures meet the requirements of § 99.31; and

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under § 99.31(a)(11) or to disclosures to a parent or student under § 99.31(a)(12).

(d) Except for disclosures under § 99.31(a) (11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

99.33 Disclosure should be made only on the condition that the information is used for the purposes for which it was sought and not redisclosed without consent of the parent. This information should be provided with the disclosure.

§ 99.34 What conditions apply to disclosure of information to to the educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall--

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student unless--

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under § 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

99.34 This section provides conditions for disclosure to educational agencies that appear to be in conflict with the intent of Part H regulation 303.344 (h)(2)(ii) requiring consent for disclosure to the local education agency.

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(3) Give the parent or eligible student, upon request, an opportunity for a hearing under subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if--

(1) The student is enrolled in or receives devices from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

99.35 This permits disclosure for Federal and State purposes for audit, evaluation, or compliance.

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must--

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (B) of this section does not apply if--

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

99.36 Disclosure is permitted to protect the health or safety of the student, or other individuals, but such disclosure must be significantly necessary.

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(I))

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§ 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of--

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A) and (B))

99.37 The provisions for directory information (defined on page 133) allow certain information to be published that is generally not considered harmful or an invasion of privacy. Directory information provisions are rarely indicated for students with handicaps with perhaps the exception of an annual from a residential school or similiar situations. It is most unlikely that directory information would be published for Part H students because of their age and the nature of the programs serving them.

Subpart E--What are the Enforcement Procedures?

§ 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?

(a) For the purposes of this subpart, "Office" means the Family Policy and Regulations Office, U.S. Department of Education.

(b) The Secretary designates the Office to--

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act.

(Authority: 20 U.S.C. 1232g(f) and (g), 1234)

99.60 The Family Policy and Regulations Office can investigate complaints of violations under this Act.

§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

99.61 If State laws were in conflict with this Act, the State should have notified the Federal government of such conflicts within 45 days of FERPA's passage.

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99.62 Reports may be required of Part H recipients to resolve complaints.

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g(f) and (g))

99.63 This lists the address for complaints.

§ 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy and Regulations Office, U.S. Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1232(g))

99.64 Written complaints must have specific allegations.

§ 99.64 What is the complaint procedure?

(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(Authority: 20 U.S.C. 1232g(f))

99.65 Notice and substance of the complaint are provided along with the opportunity to respond.

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) If the Office receives a complaint, it notifies the complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(b) The notice to the agency or institution under paragraph (a) of this section--

(1) Includes the substance of the alleged violation; and

(2) Informs the agency or institution that the Office will investigate the complaint and that the educational agency or institution may submit a written response to the complaint.

(Authority: 20 U.S.C. 1232g(g))

99.66 Findings and their basis are communicated and steps may be required to bring the agency into compliance.

§ 99.66 What are the responsibilities of the Office in this enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

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(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section--

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

99.67 Actions for enforcement if an agency does not comply are listed.

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under § 99.66(c), the Secretary may take an action authorized under 34 CFR Part 78, including--

(1) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(2) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94 (b) or 298.45(b), depending upon the applicable program under which the notice is issued; or

(3) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94 (c) or 298.45(c), depending upon the program under which the notice is issued.

(b) If, after an investigation under § 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

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Part Four

Supplementary Information

Chapter 16 presents an analysis of selected topics or issues from the final regulations for the program for infants and toddlers with handicaps. These selections have been noted throughout the annotation columns of this volume with the indication, (See Analysis). The topics will be presented here alphabetically.

It is important to remember that this analysis represents only one man's opinions. The analysis is interpretative in nature and does not reflect the activities of any State or Federal applicant or contractor. I have gone to great lengths to avoid under- or over-interpreting the topics. However, it must be recognized that interpretation and implementation still continue with these most complex regulations.

There are individuals who would like to interpret these regulations to achieve ends consistent with their particular beliefs and their desires for the future of the Part H program or for the involvement of their profession or discipline. I have made great efforts to avoid doing so. Rather, I have sought to highlight briefly the crucial portions that must be addressed in State regulations and policy development, as well as information that will be important to service providers, parents, and other advocates. In general, I believe my comments represent thoughts shared by many knowledgeable individuals involved with this program; but those who actually work with the system will ultimately control the qualitative aspects of the implementation of the Part H program.

The eighteen topical areas analyzed here include: case management, developmental delay, eligibility, entitlement, evaluation and assessment, financial issues, health services, individualized family service plan, interagency agreements, least restrictive environment, personnel development, personnel standards, policies, procedural safeguards, statewide system, timetables, transition, and waiver.

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Case Management

In contrast to the special education regulations and services of old, case management as defined in Part H is a new service. Part H expectations for comprehensive, coordinated, multidisciplinary assistance, including financial and resource services, stand to force this new case management into a pivotal position. As the assigned core to the delivery of coordinated services to children and families, it could in fact become a profession or discipline of its own. Although case management activities have always been necessary, especially for children with more complicated special needs, the new importance this service assumes is certainly a welcome twist.

There are three controversial issues related to case management, however. First, few like the title: Families and their children do not want to be "cases," and they certainly do not want to be "managed." One alternative that has been suggested is "care coordination."

Second, there is a more substantive problem. According to §303.344(g)(1), the case manager is to be chosen "from the profession most immediately relevant to the child's or family's needs." Operationally, this presents a dilemma in many children's cases. The reason for requiring comprehensive, coordinated, multidisciplinary services is because of children's multiple needs. The choice of the "most...relevant" profession will vary, depending on who is making the judgement.

This stipulation is also a problem for parents and parent groups, for another reason. They advocate for parents, themselves, to be case managers. The Federal perspective on this issue indicates that placing such responsibility on parents is inappropriate and potentially burdensome; this perspective holds that the legislation intended for parents to be consumers of such services, not the parties responsible. Finally, § 303.6(d), which discusses the assignment of case managers "from the most relevant discipline," also allows their assignment "as permitted under State law." These guidelines may be difficult to follow. Matching case managers to children by discipline will not be a simple,

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straightforward procedure. Finally, when are case managers to be appointed? Should it be at the point of referral or after eligibility has been established and an IFSP is being developed?

A full overview of the case management process, including case management activities and employment requirements and qualifications, is provided in § 303.6. Part (a)(2)(ii) notes that the case managers serve as the "single point of contact" for helping parents. This is an important concept in the delivery of services, but it will be difficult to implement because general service providers will have a hard time managing many of the "single point of contact" functions, along with their other responsibilities. In addition, the nurturing role of most early intervention service personnel towards their children will probably cause multiple agencies to want to be case managers for the same child.

Developmental Delay

Because of the discretionary nature of the Part H legislation, the Federal government in § 303.300 has empowered the States to define "developmental delay" by designating the levels of functioning that will determine eligibility. (The implications of this are discussed under "eligibility.") The State must also specify the procedures to be used to measure the child's developmental functioning. Although determination of the level of functioning required to qualify is up to the States, they must consider all five specified developmental areas of functioning (cognitive, physical, language and speech, psychosocial, and self-help) and must deem children qualified when they meet the State's criteria in any one or more areas.

Eligibility

Two groups are eligible for this program. The primary population (infants and toddlers with handicaps) has been defined in part (a) of §303.16. This group was further subdivided into (1) those experiencing developmental delays and (2) those with diagnosed physical or mental conditions that have a high probability of resulting in developmental

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delays. Admission into subgroup one is determined through the definition of developmental delay discussed prior to this section. The State has great discretion to regulate the level of delay required, conceivably limiting eligibility to those with severe delays (perhaps one percent or less of the population) or opening eligibility to those with modest delays (up to perhaps ten percent of the population). The second subgroup, that with conditions having a high probability of delay, was discussed in note one (on page 64 of this volume) following the definition of § 303.16, which describes the legislative intent in this matter. The statistical approach to determine high probability is discouraged in the note and examples of conditions are given that could lead to eligibility. In order to comply, States will need to regulate this second portion of infants and toddlers with handicaps by condition and other means, without setting statistical delay requirements. This could simplify the eligibility determination for this group.

The second group specified in the legislation was children at risk of having substantial developmental delays if early intervention services are not provided for them. It was left up to each State's discretion whether to include this group or not. Initially, there appeared to be great interest in including this population. The current level of such interest is being moderated, however, by differences both of opinion about who is at risk and by concern over projections of the amount of financial resources required to include this group.

Entitlement

There has been great debate over whether this is a discretionary program or an entitlement program. Certainly, discretionary language is used at the Federal level: States have the discretion to decide to participate. However, by participating, States make certain assurances about the nature of their involvement. By the time they receive funding in the third year of the program, States must either have adopted certain policies or have been granted a temporary waiver. The intent of these policies is to commit the State to providing full services to eligible infants and toddlers by a certain point in the future, thus creating an entitlement.

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In the fifth year of funding, participating States must entitle all eligible infants and toddlers to appropriate services from the statewide system of early intervention.

Evaluation and Assessment

The definitions given in §303.322 of evaluation and assessment have made important distinctions between the two functions, which had previously been considered practically synonymous. Under the new definitions, evaluation determines initial and continuing eligibility and assessment determines child and family needs throughout eligibility, for the purpose of planning and delivery services. Family advocates suggest that we "determine family strengths and needs" rather than assess families. Their comments deserve serious consideration.

§303.322(c)(2) provides that evaluation and assessment must be based on "informed clinical opinion" by qualified personnel. Left unclear is the relative role and strength of this "informed clinical opinion" basis when contrasted to the formal eligibility requirements established by the States. This point is now being debated and will probably be clarified, to some extent, in the future.

Finally, family assessment is a topic requiring a great deal of development. Such assessment can only be done with the family's consent, but, who is qualified to do so and what standards and procedures should guide such an assessment? Professionals in most disciplines feel qualified, but few have clear strengths in this specific area. Because such assessment is limited to family needs related to enhancing the development of their child, disciplinary turf becomes even more diffuse, as no discipline has much distinct claim.

Financial Issues

The Part H expectations for financial cooperation and coordination are unparalleled by other Federal programs and can be achieved only through great talent and effort. Developing a financial plan to pay for a

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comprehensive, statewide system of early intervention services looms as one of the key implementations for Part H. The Federal incentive dollars provide, at best, a small portion of the costs of the services children will be entitled to, in participating States. Thus, attention will be turned to the coordination of resources already provided to or which can be directed at, eligible children as one such source of funding. Avoiding unnecessary duplication of services becomes one source of funds, through costs saved. Clearly, the lead agency will be in the unenviable position of being accountable where financial accord will be difficult to develop or determine.

Equitable distribution of Part H resources, including consideration of the need for services across geographic portions of the State, is also required by § 303.146. This could present difficulties to implementers. If all entitled children receive full service, there would be little to debate about the equitable distribution of resources and the statewide system would be meeting its goal. However, if there are inadequate resources to provide full service, regulating the equitable distribution of resources will be another story. This stipulation about equitable geographic distribution appears to raise potential issues about insufficiency of resources to finance the Part H program fully. Geographically diverse program advocates could certainly note this requirement to support their advocacy position, but determining such equitable distribution could be a challenge for policy makers.

A prohibition against "supplanting," along with a clarifying note, is found in §303.124. This is another area that is difficult to operationalize. No particular fiscal year is required by the regulations, and States are allowed to use a year where they have adequate information. The primary difficulty is, and will continue to be, having adequate information. What, for example, was the prior level of effort for early intervention services that are so broadly defined? The January 1989 report to Congress entitled "Meeting the Needs of Infants and Toddlers with Handicaps" indicated that it is impossible to estimate the amount of Federal funding that actually supports early intervention services (p. 17). Secondly, who can withdraw funding and under what conditions? The

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requirement that prior funding efforts not be reduced is clearly directed at State efforts and the actual funding levels of State agencies. Private and local service providers are not required to maintain their effort. Similarly, the State is not required to maintain its efforts with individual service providers, and is only prohibited from reducing State funding and providing Part H resources.

Health Services

The definition of health services found in §303.13 is consistent with evolving practices for health services, as related services, under Part B. Additionally, the areas previously considered unclear have been quite well defined through case law. It is important to understand the definition of health services as entitled Part H services necessary to participate in early intervention services. Participating States will need to expend a great deal of effort communicating about and providing for related health services.

Individualized Family Service Plan (IFSP)

The IFSP is a newly required component of the statewide system. It can be contrasted with the individualized education program (IEP) in the Part B special education regulation. The IFSP clearly establishes higher requirements and breadth than the IEP, though. Regardless of the strengths of IEPs, shortcomings found by consumers provided clear directions for the IFSP requirements. Foremost is the role of families. Infants and toddlers do not fit compulsory education requirements and early intervention services can be provided only with consent. Additionally, the IFSP requires the determination of family strengths and needs, at their option, and family services to enhance their child's development. The IFSP, like the IEP, becomes the management tool for documenting efforts and compliance, providing a clear record for procedural issues, and focusing efforts on the child (and family). It, along with assessment and evaluation reports, could provide the major portion of a child's educational records.

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Importantly, IFSPs must: (1) be developed by qualified personnel; (2) be based on assessment and evaluation; (3) be dealt with at a meeting within 45 calendar days of referral; (4) be reviewed every six months; (5) include listings of other services not required under Part H; and (6) contain eight specific types of content required in §303.344. Participating in the fourth year of the Part H program requires the development, but not the implementation, of IFSPs. It would be both frustrating and awkward to develop an IFSP with parents but not be able to implement it.

Interagency Agreements

The Part H program is designed to be a comprehensive, coordinated, multidisciplinary, interagency program of early intervention services. For this reason interagency agreements are required, by regulation, between the lead agency and each State-level agency involved in the State's early intervention program (§ 303.523). Developing such State-level interagency agreements represents one of the most significant challenges to continued participation in the Part H program within the timelines established by law. Reaching interagency agreements that would commit future agency actions and resources is a difficult process for lead agencies and the ICC. Agencies are not quick to commit themselves to a new program when other planned programs have long waited for fiscal support and implementation. Additionally, agencies have great concern about their ability to control costs when the Part H required services are based on an entitlement. While it is the lead agency (and the State) that is accountable for assuring entitled services, agencies will be cautious in agreeing to potentially expensive responsibilities.

States that have developed a new, separate, lead agency responsible for early intervention under Part H have an agency that does not have other initiatives competing for resources. Also some States, using an existing agency as the lead agency, use a separate funding request for early intervention, apart from the lead agency's general fiscal proposals. The separate request can then be supported by multiple agencies during the funding process. When there are clear sources of

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financial support for the early intervention programs, rather than funding competition with existing initiatives and limited resources, interagency agreements will be more easily achieved.

Least Restrictive Environment

While there has been great sensitivity to the concept of "least restrictive environment" in the decade since the passage of the Part B provisions, Part H was relatively mute on this point until the final regulations. Initially, perhaps, people thought that Part H resources would not be used to create separate, segregated services. Public comments, however, requested some guidance in this area. This has been addressed through defining the word "location" and requiring early intervention service providers to specify the location and method of services on the IFSP. The definition of early intervention services continues by stating, "to the extent appropriate,...services must be provided in...settings in which infants and toddlers without handicaps would participate" (§303.12(b)). This is certainly a helpful addition to the final regulations and should be effective in supporting more normalized services to infants and toddlers.

Personnel Development

Personnel development plans are required from States to assure (and promote) the availability of personnel qualified to meet the standards of the State. Even with an entitlement to services, these services cannot be delivered without appropriate personnel. Congress has always been sensitive to this need because of its contacts with parents and advocates. In addition, professionals are interested in assuring that their discipline's services meet standards set within the context and conditions desired by their professional organizations.

States have the options of using Part B Comprehensive System of Personnel Development (CSPD) plans or developing new procedures under Part H. In either case, the State must assure that the method selected meets the requirements of § 303.360 for a comprehensive

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system of personnel development as specified in Part H. The following, adapted from draft OSEP materials, provides a listing of Part B CSPD sections and a short description of each section content. This permits an examination of Part B CSPD expectations.

Part B CSPD Selected Topics
(§§ 300.381 - 300.387)

	References
Inservice Training	
1. Input from the field	§300.381(a), (b)
2. Annual needs assessment	§300.383(b)
3. Identify target populations	§300.383(c)
4. Describe content of training	§300.382(f)(2) §300.382(f)(4)
5. Describe trainers	§300.382(d) §300.382(e) §300.382(f)(5)
6. Identify sources of funding	§300.382(e) §300.382(f)(6)
7. Specify timelines for delivery	§300.382(e) §300.382(f)(6)
8. Assurances from the SEA	§300.382(e)
Preservice Training	
1. Describe plan	§300.383(a)
2. Annual assessment	§300.383
3. Describe SEA dissemination	§300.384
4. Implementation of statewide plan	§300.385
Technical Assistance Plan	§300.387

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The Part H data collection requirements include information about numbers of personnel available and needed to provide early intervention services. With Part H, there is a broader range of personnel to assess if this is to be done as a part of the Part B CSPD. Additionally, Part H requirements for CSPD include: interdisciplinary training; including a specified variety of personnel for training; and insuring certain content in the training.

Some personnel training requirements exist under certain conditions; they will be discussed in the following section.

Personnel Standards

Personnel standards represent a complicated and controversial set of regulations under Part H because specialized requirements in the regulations extend previous practices in personnel standards into new requirements for States. Appropriate services to eligible children have long been expected to be provided by qualified personnel. Generally, personnel have been considered qualified if they meet the requirement for certification or licensure appropriate for their professional role.

Part H introduces a new requirement in § 303.361 (a similar change was also made during 1989 in the Part B regulations) that "appropriate professional requirements" mean entry level requirements that "are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services." This has been interpreted to mean that when two or more standards exist in a State, within or between agencies, only individuals meeting the "higher standard" would be "qualified."

Statewide systems of early intervention must have policies and procedures to establish and maintain standards for early intervention personnel that must be consistent with <u>any</u> State requirements. In addition, the regulations require that if any standards are not based on the highest requirements, the State's application must notify public agencies and personnel and specify timelines established for retraining

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or hiring personnel that meet "appropriate" professional requirements.

While this is a controversial standard and presents great difficulty for some States, a few clarifications have been provided in notes and in the appendices to the publication of the final regulations. First, while timelines are required for retraining, there are no maximum requirements for these changes and the timelines could be over an extended time period. Second, States can determine the specific occupational categories and refine and extend those categories (from the note after §303.361). Finally, the highest requirement in an occupational category may be restricted to a subset of that profession. For example, school psychologists were noted to be different from other unspecified psychologists and not considered to be subject to the uniform "highest standard" for psychologists in general. Thus, while the final regulations appear to provide extensive requirements beyond the scope of the legislation, the interpretation of these requirements will still require clarification before many States understand and satisfy the Part H expectations. This is why the regulatory process includes compliance activities and monitoring and provides for corrective actions.

Policies

Policies, defined in § 303.19, are required in at least nine specific areas (See page 192 in the index under policies). The regulatory definition of policies includes State statues, regulations, Governor's orders, directives, or other written documents that represent the State's position. This appears to be a fairly broad definition that will allow lead agencies a variety of strategies to achieve the policy desired and will create a supportive Federal environment to encourage the development and implementation of the Part H program.

The most critical policy relates to the State's commitment to develop and implement the statewide system of early intervention services. It is this policy that creates the entitlement to services for all eligible children. During the early implementation and commitment period, the Federal government can be expected to interpret the acceptability of policy

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commitments from the States liberally. These policies can then be improved or extended as necessary through monitoring, compliance, and corrective activities as implementation continues.

Procedural Safeguards

Procedural safeguards cover a variety of important concepts including informed consent, reasonable notice, hearing procedures, and complaint resolution. The safeguards covering hearing procedures were significantly expanded between the proposed and final regulations. In this area, States are, once again, permitted to adopt the Part B or Part H requirements. To illustrate a comparison of the two sets of requirements, the following, adapted from OSEP draft materials, contrasts selected portions of each.

Selected Hearing Procedures Under Parts B & H

Topic	Part B	Part H
A. Subjects addressed at hearings	§300.506(a)	§303.420(a)
B. Impartial hearing person	§300.507	§303.421
C. Parent rights at hearings	§300.508	§303.422
D. Convenience of hearings	§300.512(d)	§303.423(a)
E. Timelines for hearings	(45 days) §300.512(a)	(30 days) §303.423(b)
F. Administrative appeal; impartial review	§300.510	no equivalent
G. Timelines for review	(30 days) §300.512(b)	no equivalent
H. Civil action	§300.511	§303.424
I. Child's status during hearings	§300.513	§303.525
J. Attorney's fees	yes*	not provided
K. Mediation (Permitted)	Note under §300.506	Note under §303.420

*provided by separate statute

The Part H requirements in the final regulations were quite similar to the Part B requirements, except for a 30-day completion, instead of 45 days.

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In addition to the shorter timelines, somewhat different subjects can be addressed at hearings. There is a statute that provides the attorney's fee in certain Part B hearings, but this would not apply to Part H since attorneys are not part of the procedures themselves. Because of the similarities of the two sets of procedures, States may prefer to choose the Part B procedures because they allow fifteen additional calendar days to complete the process.

Beyond the impartial procedures for resolving individual child complaints, there is an administrative complaint procedure in Subpart F: State Administration. States and service providers should carefully review the requirements (and annotations) for consent, native language, personally identifiable information, and prior notice in Chapter 11.

Statewide System

Understanding the concept of the statewide system of early intervention services is critical to the implementation of the Part H program. This system of early intervention services is the desired purpose, objective, and outcome of the program. The system must meet the extensive requirements of the regulations, but how this is done is solely at the discretion of the State during its planning and development period. Several areas of discretion were wisely introduced into the program requirements to encourage initial and continuing participation by States. After all, it is only through extended participation that the full intent of the program can be approximated.

Timetables

One of the components required of the statewide system is the inclusion of timetables for serving all eligible children. This feature was drafted into the legislation to encourage provision of full services prior to the fifth year of the program, when they are required. It now appears, that only a few statewide systems will be fully implemented prior to the fifth year. Earlier, it was thought that some States that already had established mandates to serve this age population would be both

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prepared and able to advance their timetables. It appears that the differences between the Part H requirements for implementation and participation and the States' current mandates have generally proved sufficiently discrepant to warrant the same scrutiny and activity that exist in States without previous mandates.

Transition

Attention to transition to preschool services or other services, as appropriate, at age three is a required component of the IFSP (§303.344 (h)). Another portion of P.L. 99-457, which was discretionary in nature, was directed toward services for children ages three through five and designed to allow clear continuity of programming, rather than permitting a gap in services, at age three. Because the services for children ages three to five are a downward extension of the Part B program, the additional Part H requirements regarding families, and so forth, do not automatically carry over. This will lead to some transitional differences; but the service requirement is an important feature of an IFSP as children near the transition point.

Waiver

The Part H legislation provided a waiver for States that were unable to complete their policy adoption commitment for implementing a statewide system in their third year application. Receiving this waiver required reasons, evidence of a good faith effort, and an assurance that the policy will be in effect by the fourth year of participation. Such a waiver has clearly been needed because of the difficulty of adopting such a policy. It also would seem difficult to be able to make the assurance that the policy will be adopted by the fourth year, however, when such an adoption appears to rely on many factors beyond the current control of the Part H implementers.

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Act - 1. The Education of the Handicapped Act. (§ 303.5); 2. (In FERPA) - The Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act. (§ 99.3)

Aggregate amount - The amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204. (§ 303.200(b)(1))

Applicant - A party requesting a grant or subgrant under a program of the Department. (EDGAR § 77.1)

Appropriate professional requirements: **(See Analysis-** Personnel Standards)

Appropriate professional requirements in the State - Entry level requirements that -- (1) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and (2) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families, who are served by State, local, and private agencies. (§ 303.361(a)(1))

Assessment -- a new definition created under Part H -- related to ongoing procedures during eligibility rather than to eligibility alone.

Assessment - The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify -- (1) The child's unique needs; (2) The family's strengths and needs related to development of the child; and (3) The nature and extent of early intervention services that are needed by the child and the child's family to meet the needs in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. (§ 303.322(b)(2))

This "at risk" definition is taken from a note and is not binding. It does provide excellent guidance.

At risk of having substantial developmental delays if early intervention services are not provided - In defining the "at risk" population, States may include well-known biological and other factors that can be identified during the neonatal period, and that place infants "at risk" for developmental delay. Commonly cited factors relating to infants include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, and infection. It should be noted that these factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without those problems. (§ 303.16(b) (Note))

Attendance - Includes, but is not limited to-- (1) Attendance in person or by correspondence; and (2) The period during which a person is working under a work-study program. (§ 99.3)

Audiology- a new definition from Part H.

Audiology - (1) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques; (2) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; (3) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; (4) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services; (5) Provision of services for prevention of hearing loss; and (6) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices. (§ 303.12(d)(1))

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Award - An amount of funds that the Department provides under a grant or contract. (EDGAR § 77.1)

Case management - The activities carried out by a case manager to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program. (§ 303.6)

The case management related definitions represent new information from Part H that have no precedent in special education regulation.

Case management activities - Include -- (1) Coordinating the performance of evaluations and assessments; (2) Facilitating and participating in the development, review, and evaluation of individualized family service plans; (3) Assisting families in identifying available service providers; (4) Coordinating and monitoring the delivery of available services; (5) Informing families of the availability of advocacy services; (6) Coordinating with medical and health providers; and (7) Facilitating the development of a transition plan to preschool services, if appropriate. (§ 303.6(b))

Case management services - Assistance and services provided by a case manager to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.6. (§ 303.12(d)(2))

Case managers - Persons who, consistent with § 303.344(g), have demonstrated knowledge and understanding about -- (1) Infants and toddlers who are eligible under this part; (2) Part H of the Act and the regulations in this part; and (3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information. (§ 303.6(c))

Children - "Infants and toddlers with handicaps" as that term is defined in § 303.16. (§ 303.7)

Commingle - Depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. (§ 303.123 (Note))

Consent - (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication; (2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. (§ 303.401(a))

Consent- an important definition, consistent with accepted practices and case law.

Contract - (except as used in the definitions for "grant" and except where qualified by "Federal") A procurement contract under a grant. "Subcontract" means a procurement subcontract under such a contract. (EDGAR § 74.3)

Council - The State Interagency Coordinating Council. (§ 303.8)

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Days- Calendar days are specified, not working days. Weekends and holidays are included.

Days - Calendar days. (§ 303.9)

Department - The U.S. Department of Education. (EDGAR § 77.1)

Destruction - Physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (§ 300.560)

Developmental delay- a critical Part H definition (**See Analysis** - Developmental Delay), it has the meaning given to it by the State with certain requirements.

Developmental delay - As used in this part "developmental delay" has the meaning given to that term by a State under § 303.300. (§ 303.10) Each statewide system of early intervention services (system) must include the definition of "developmental delay" that will be used by the State in carrying out programs under this part. The State's definition must -- (1) Specify that a child may be determined to be eligible if the child has a delay, in accordance with paragraphs (b) and (c) of § 303.300, in one or more of the following developmental areas: cognitive development; physical development, including vision and hearing; language and speech development; psychosocial development; or self-help skills; (2) Designate the levels of functioning, or other criteria, that will be used in determining a child's eligibility as a result of developmental delay; and (3) Describe the procedures the State will use to determine the existence of a developmental delay -- in each developmental area included in paragraph (a) of this section. (§ 303.300)(a))

Directory information is unlikely to be provided for Part H students.

Directory information - Information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended. (§ 99.3)

Disclosure- an important definition for Part H activities.

Disclosure - To permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means. (§ 99.3)

Discipline- an occupational category providing early intervention, meeting certain criteria.

Discipline - A specific occupational category that -- (1) Provides early intervention services to children eligible under this part and their families; (2) Has been established or designated by the State; and (3) Has a required scope of responsibility and degree of supervision. (§ 303.361(a)(3))

Early intervention program- the total effort of the State.

Early intervention program - The total effort in a State that is directed at meeting the needs of children eligible under this part and their families. (§ 303.11)

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Early intervention services - Services that -- (1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development; (2) Are selected in collaboration with the parents; (3) Are provided -- Under public supervision; By "qualified" personnel, as defined in § 303.21, including the types of personnel listed in paragraph (e) of this section; In conformity with an individualized family service plan; and at no cost, unless, subject to § 303.520(b)(3), Federal or State law provides a system of payments by families, including a schedule of sliding fees; and (4) Meet the standards of the State, including the requirements of this part. (§ 303.12)

Early intervention services- a critical Part H definition developed from several of the regulations.

EDGAR - The Education Department General Administrative Regulations (34 CFR Parts 74, 75, 76, 77 and 78)

Education - "Early intervention services" under this part. (§ 303.4(b)(2))

Education of handicapped children - The provision of services to children eligible under this part and their families. (§ 303.460(b)(2))

Education of all handicapped children- The provision of services to children eligible under this part and their families. (§ 303.460(b)(2))

Education records - Those records that are-- Directly related to a student; and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include-- Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record; Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are-- Maintained separately from education records; Maintained solely for law enforcement purposes; and Disclosed only to law enforcement officials of the same jurisdiction; Records relating to an individual who is employed by an educational agency or institution, that-- Are made and maintained in the normal course of business; Relate exclusively to the individual in that individual's capacity as an employee; and Are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition. Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are-- Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; Made, maintained, or used only in connection with treatment of the student; and Disclosed only to individuals providing the "treatment." For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and Records that only contain information about an individual after he or she is no longer a student at that agency or institution. (§ 99.3)

Education records- an important definition coming from the Family Educational Rights and Privacy Act

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Eligible student- not applicable to Part H.

Evaluation- a critical Part H definition -- refers to procedures to determine initial and continuing eligibility.

Family training, etc.- a new Part H definition.

Frequency- a new definition important to the IFSP.

Eligible student - a student who has reached 18 years of age or is attending an institution of postsecondary education. (§ 99.3)

Evaluation - The procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with handicaps" in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section. (§ 303.322 (b)(1))

Family training, counseling, and home visits - Services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development. (§ 303.12(d)(3))

Financial aid - a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution. (§ 99.31(a)(4)(ii))

Fiscal year - The Federal fiscal year - a period beginning on October 1 and ending on the following September 30.

Free public education - "Early intervention services" under this part. (§ 303.4(b)(2))

Frequency - The number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis. (§ 303.344(d)(2)(i))

Grant - An award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include any Federal procurements subject to the procurement regulations in 48 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis. (EDGAR § 74.3)

Grant period - The period for which funds have been awarded. (EDGAR § 77.1)

Grantee - The nonprofit corporation or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from

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accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations, such as State educational agencies, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant. (EDGAR § 74.3)

Health services - Services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services. The term includes -- (1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or osteotomy collection bags, and other health services; and (2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services. The term does not include the following: (1) Services that are -- (i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or (ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose). (2) Devices necessary to control or treat a medical condition. (3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children. (§ 303.13)

Health services- an important Part H definition to determine which health services are required with an IFSP and which medical services are not.

High probability - Not intended to be viewed as a statistical term. Rather, the phrase "have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay" applies to conditions with known etiologies and developmental consequences. Examples of these conditions include Down Syndrome and other chromosomal abnormalities, sensory impairments, including vision and hearing, inborn errors of metabolism, microcephaly, severe attachment disorders, including failure to thrive, seizure disorders, and fetal alcohol syndrome. (§ 303.16(b) (Note 1))

High probability- this definition was taken from a note and is not regulatory, but provides excellent guidance.

Highest requirements in the State applicable to a profession or discipline - The highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline. (§ 303.361)(a)(2))

Highest requirements- an important definition (**See Analysis**- Personnel Standards)

IFSP - The individualized family service plan, as that term is defined in § 303.340(b). (§ 303.14)

IFSP- an important Part H feature, defined extensively by regulation -- See next page.

Impartial - The person appointed to implement the complaint resolution process who -- (1) Is not an employee of any agency or program involved in the provision of early intervention services or care of the child; and (2) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. A person who otherwise qualifies under paragraph § 303.421(b)(1) is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process. (§ 303.421(b))

Impartial- important definition during the resolution of complaints.

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Include- was defined to indicate that lists in the Part H regulations are not inclusive.

IFSP- an important Part H feature, defined extensively by regulation.

Infants and toddlers- defined as children from birth through age two.

Infants and toddlers with handicaps- a critical Part H definition; note part (1) includes developmental delay(s), which is also defined.

Intensity- important to specification in the IFSP.

Local educational agencies- important definition that modifies regulations referenced from Part H.

Location- important because of least restrictive intent of 303.12(b).

Include; including - The items named are not all of the possible items that are covered whether like or unlike the ones named. (§ 303.15)

Individualized family service plan and IFSP- A written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must --(1) Be developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services; (2) Be based on the multidisciplinary evaluation and assessment of the child, and the assessment of the child's family, as required in § 303.322; and (3) Include services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child. (§ 303.340(b))

Infants and toddlers - Children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary. (§ 303.200(b)(2))

Infants and toddlers with handicaps - Individuals from birth through age two who need early intervention services because they -- (1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: (i) Cognitive development; (ii) Physical development, including vision and hearing; (iii) Language and speech development; (iv) Psychosocial development; or (v) Self-help skills; or (2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. The term may also include, at a State's discretion, children from birth though age two who are at risk of having substantial developmental delays if early intervention services are not provided. (§ 303.16)

Institution of postsecondary education - An institution that provides education to students beyond the secondary school level: "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law. (§ 99.3)

Intensity - The number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis. (§ 303.344(d)(2)(i))

Intermediate educational units - Local service providers. (§ 303.460 (b)(3))

Lead agency - "State educational agency" means the lead agency under this part. (§ 303.4 (b)(1))

Local educational agencies - Local service providers. (§ 303.460(b) (3))

Location - Subject to § 303.12(b), where a service is provided (e.g., in the child's home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child). (§ 303.344(d)(2)(ii))

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Medical services only for diagnostic or evaluation purposes - Services provided by a licensed physician to determine a child's developmental status and need for early intervention services. (§ 303.12(d)(5))

Medical services, etc. - Important Part H definition.

Method - How a service is provided. (§ 303.344(d)(iii))

Multidisciplinary - The involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322, and development of the IFSP in § 303.342. (§ 303.17)

Multidisciplinary- a liberal definition requiring two or more disciplines (also defined).

Native language - When used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part. (§ 303.401(b))

Native language- important, includes mode of communication.

Nursing services - Includes -- (1) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems; (2) Provision of nursing care to prevent health problems, promote optimal health and development; and (3) Administration of medications, treatments, and regimens prescribed by a licensed physician. (§ 303.12(d)(6))

Nursing services- a new Part H definition.

Nutrition services - Includes -- (1) Conducting individual assessments in --(a) Nutritional history and dietary intake; (b) Anthropometric, biochemical, and clinical variables; (c) Feeding skills and feeding problems; and (d) Food habits and food preferences; (2) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (b)(7)(i) of this section; and (3) Making referrals to appropriate community resources to carry out nutrition goals. (§ 303.12(d)(7))

Nutrition services- a new Part H definition.

Occupational therapy - Includes services to address the functional needs of a child related to the performance of self-help skills, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include -- (1) Identification, assessment, and intervention; (2) Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and (3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability. (§ 303.12(d)(8))

Occupational therapy- a new Part H definition.

Office - The Family Policy and Regulations Office, U.S. Department of Education. (§ 99.60)

Parent - A parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 303.405. The term does not include the State if the child is a ward of the State. (§ 303.18)

Parent- a Part H definition consistent with other regulations including Part B.

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Participating agency- applies to Part H service providers for confidentiality.

Participating agency - Any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part. (§ 300.560)

Party - An individual, agency, institution, or organization. (§ 99.3)

Personally identifiable- important to safeguards for educational records.

Personally identifiable - Information includes -- (1) The name of the child, the child's parent, or other family member; (2) The address of the child; (3) A personal identifier, such as the child's or parent's social security number; or (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.(§ 303.401(c))

Physical therapy- a new Part H definition.

Physical therapy - Includes -- (1) Screening of infants and toddlers to identify movement dysfunction; (2) Obtaining, interpreting, and integrating information appropriate to program planning, to prevent or alleviate movement dysfunction and related functional problems; and (3) Providing services to prevent or alleviate movement dysfunction and related functional problems. (§ 303.12(d)(9))

Policies- a critical Part H definition for determining the continuing eligibility of the State to participate in the Part H program since the adoption of policies is required.

Policies - State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part. State policies include -- (1) A State's commitment to develop and implement the statewide system (see § 303.148); (2) A State's definition of "developmental delay" (see § 303.303); (3) A State's position regarding the provision of services to children who are at risk; (4) A statement that -- (i) Provides that, subject to § 303.520(b)(3), services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law; and (ii) Sets out what fees (if any) will be charged for early intervention services, and the basis for those fees; (5) A State's standards for personnel who provide services to children eligible under this part (see § 303.361); (6) A State's position and procedures related to contracting or making other arrangements with service providers under Subpart F; and (7) Other positions that the State has adopted related to implementing any of the other requirements under this part. (§ 303.19)

Primary referral sources- an important Part H definition for child find, etc.

Primary referral sources - Includes -- (1) Hospitals, including prenatal and postnatal care facilities; (2) Physicians; (3) Parents; (4) Day care programs; (5) Local educational agencies; (6) Public health facilities; (7) Other social service agencies; and (8) Other health care providers. (§ 303.321(d)(3))

Private - (As applies to an agency, organization, or institution) Not under Federal or public supervision or control. (EDGAR § 77.1)

Profession- an occupational category providing early intervention, meeting certain criteria (same as discipline).

Profession - A specific occupational category that -- (1) Provides early intervention services to children eligible under this part and their families; (2) Has been established or designated by the State; and (3) Has a required scope of responsibility and degree of supervision. (§ 303.361(a)(3))

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Profession most immediately relevant to the child's or family's needs - The IFSP must include the name of the case manager from the profession most immediately relevant to the child's or family's needs, who will be responsible for the implementation of the IFSP and coordination with other agencies and persons. As used in § 303.344 (g)(1) of this section, the term "profession" includes "case management." (§ 303.344(g)(3))

Profession most immediately relevant, etc. - a critical and controversial Part H definition that is difficult to interpret and apply.

Provision of free public education to all handicapped children - The provision of services to children eligible under this part and their families. (§ 303.460(b)(2))

Psychological services - Includes (1) Administering psychological and developmental tests, and other assessment procedures; (2) Interpreting assessment results; (3) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and (4) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs. (§ 303.12(d)(10))

Psychological services- a new Part H definition.

Public - (as applies to an agency, organization, or institution) Under the administrative supervision or control of a government other than the Federal government. (EDGAR § 77.1)

Public- important definition because of the involvement of private service providers in Part H.

Public agency - Includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families. (§303.20)

Qualified - A person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services. (§ 303.21)

Qualified- a traditional definition (See Analysis- Personnel Standards)

Qualified personnel - Early intervention services must be provided by qualified personnel, including -- (1) Audiologists; (2) Nurses; (3) Nutritionists; (4) Occupational therapists; (5) Physical therapists; (6) Physicians; (7) Psychologists; (8) Social workers; (9) Special educators; and (10) Speech and language pathologists. (§ 303.12(e))

Qualified personnel- a Part H definition that includes "including," which is also defined.

Record - any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche. (§ 99.3)

Record- important definition.

Related services - "Early intervention services" (§ 303.4(b)(2))

Related services- early intervention services, not treated separately as in Part B.

Secondary school level - The educational level (not beyond grade 12) at which secondary education is provided as determined under State law. (§ 99.3)

Secretary - The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority. (EDGAR § 77.1)

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Service providers role- defines the general role of all service providers in early intervention.

Service providers' role -To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for -- (1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area; (2) Training parents and others regarding the provision of those services; and (3) Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the individualized family service plan. (§ 303.12(c))

Social work services- a new Part H definition.

Social work services - Includes -- (1) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction; (2) Preparing a psychosocial developmental assessment of the child within the family context; (3) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; (4) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and (5) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services. (§ 303.12(d)(11))

Special education - "Early intervention services" (§ 303.4(b)(2))

Special instruction- an important definition.

Special instruction - Includes -- (1) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction, (2) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan, (3) Providing families with information, skills, and support related to enhancing the skill development of the child; and (4) Working with the child to enhance the child's development. (§ 303.12(d)(12))

Speech-language pathology- a new Part H definition.

Speech-language pathology - Includes -- (1) Identification of children with communicative or oral pharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; (2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oral pharyngeal disorders and delays in development of communication skills; and rehabilitation, or prevention, of communicative or oral pharyngeal disorders and delays in development of communication skills. (§ 303.12(d)(13))

State- includes States and others.

State - Each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. (§ 303.200(b)(3)) Except as provided in 303.200(b)(3), "State" means each of the 50 States, Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands. (§ 303.22)

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State approved or recognized certification, licensing, registration, or other comparable requirements - The requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State. (§ 303.361(a)(4))

(See Analysis- Personnel Standards)

State educational agency - The lead agency. (§ 303.4(b)(1))

State educational agency- this definition is used to interpret regulations for Part H purposes.

Statement of assurances - A State's statement of assurances must contain the information required in §§ 303.121 - 303.127. Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part. A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 - 303.127. (§ 303.120)

Student - Except as otherwise specifically provided in this part, any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records. (§ 99.3)

Transportation - Includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and related costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services. (§ 303.23)

Transportation- an important new Part H definition.

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Access rights - Confidentiality - § 300.561, p. 125

Act - (The Education of the Handicapped Act) -
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named in content of IFSP - § 303.344(g), p. 96
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